

91-654

(2)

Supreme Court, U.S.  
FILED

SEP 6 1991

OFFICE OF THE CLERK

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL J. CAFARO

- APPELLANT

vs.

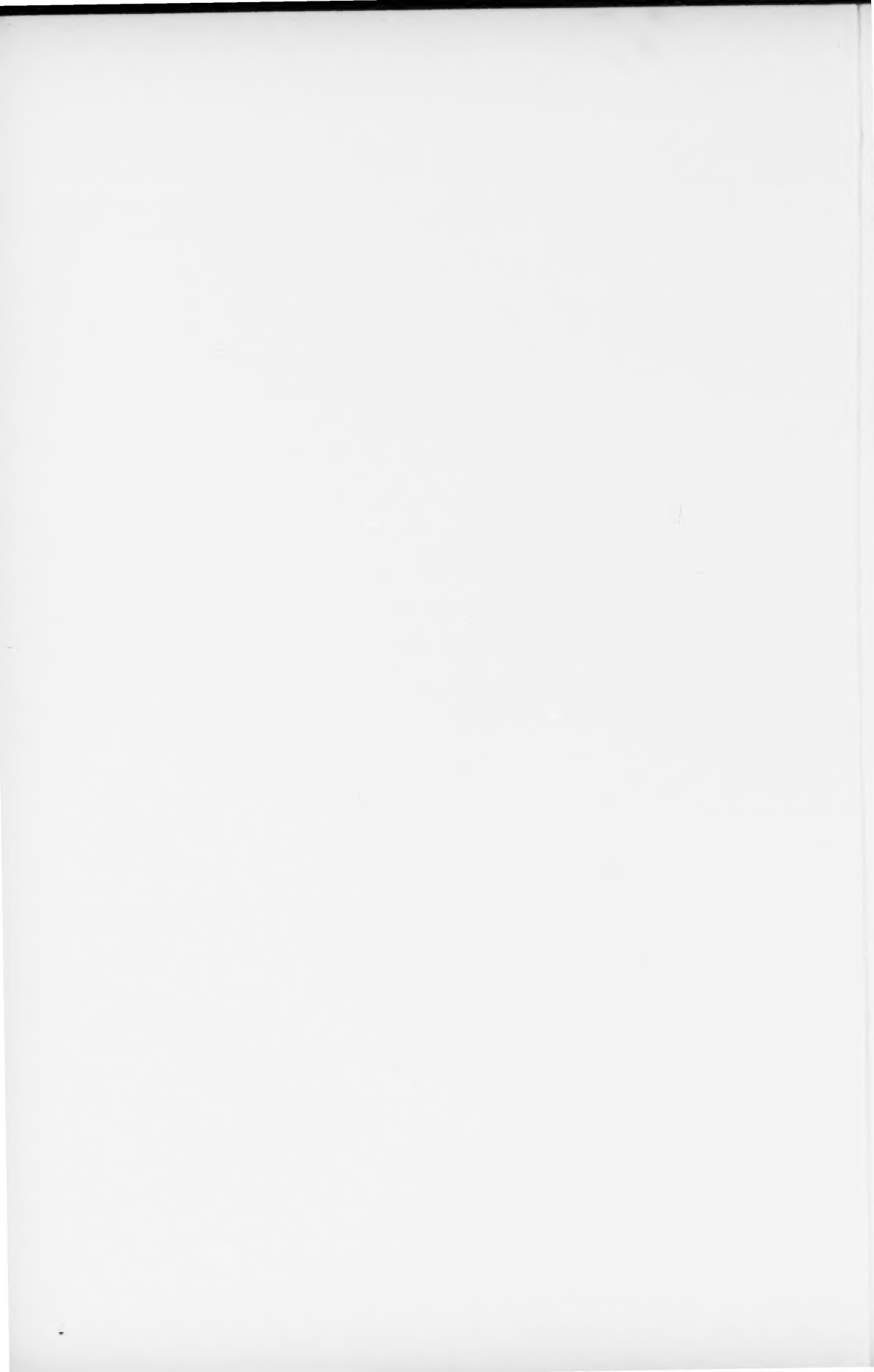
PEOPLE OF THE STATE OF NEW YORK

- RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE  
NEW YORK APPELLATE TERM OF THE SUPREME COURT  
FOR THE 9TH & 10 TH JUDICIAL DISTRICTS

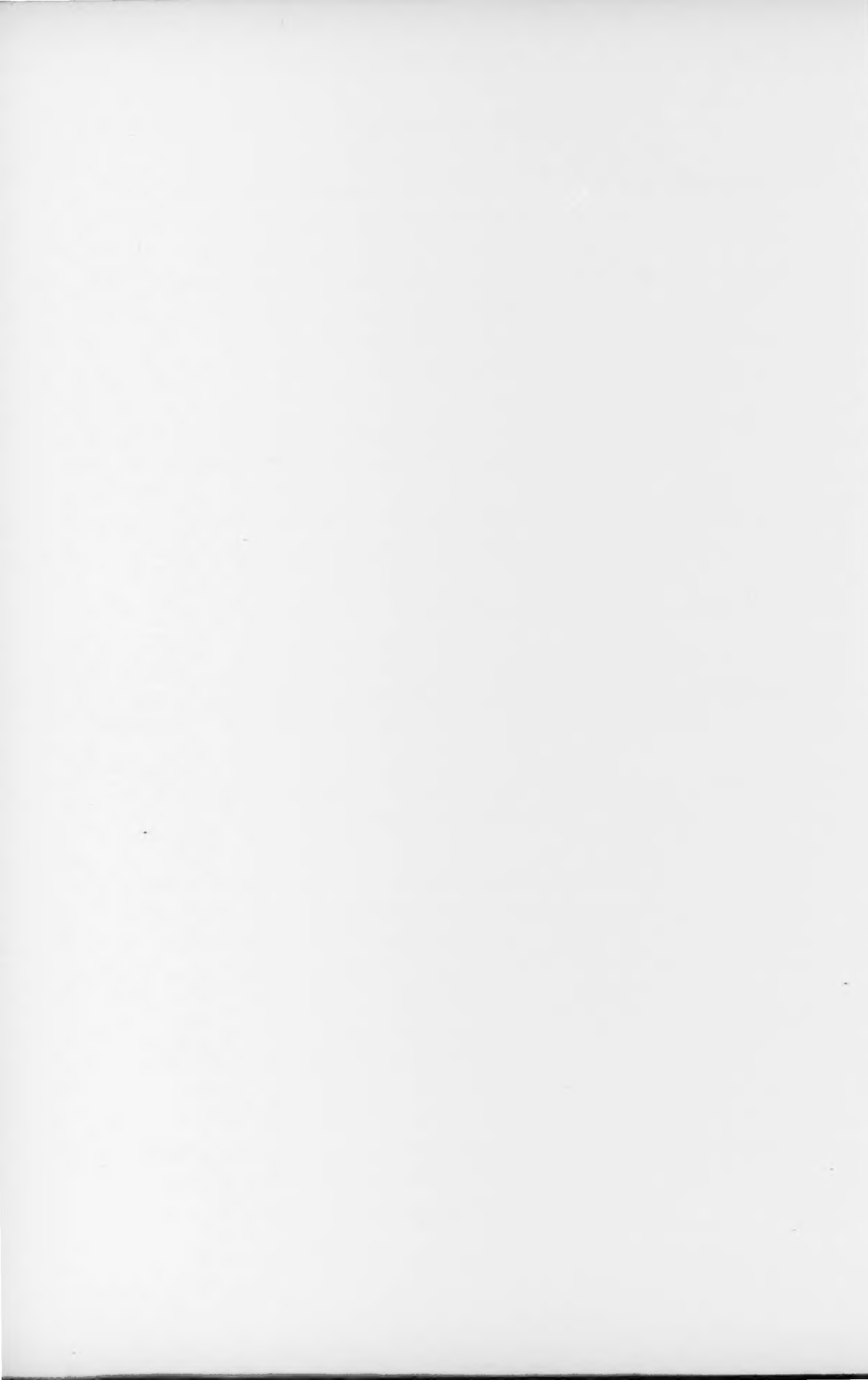
APPENDICES A-L

PAUL J. CAFARO  
PETITIONER, PRO SE  
214 DANIEL ROAD NORTH  
N. MASSAPEQUA, NEW YORK 11758



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STATE OF NEW YORK COURT OF APPEALS

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THE PEOPLE OF THE STATE OF NEW YORK  
Respondent,

vs.

PAUL J. CAFARO

Appellant

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RULING

I, Richard D. Simons, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above-named appellant for a certificate pursuant to CPL 460.20 and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at: Rome, New York  
June 10, 1991

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Richard D. Simons  
Associate Judge

APPENDIX A





SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM  
9TH AND 10TH JUDICIAL DISTRICTS

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PRESENT: DiPaola, P.J., Stark and Ingrassia

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THE PEOPLE OF THE STATE OF NEW YORK  
Respondent,

vs.

PAUL J. CAFARO

Appellant

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Cal. No. 90-248

Decided: March 18, 1991

RULING

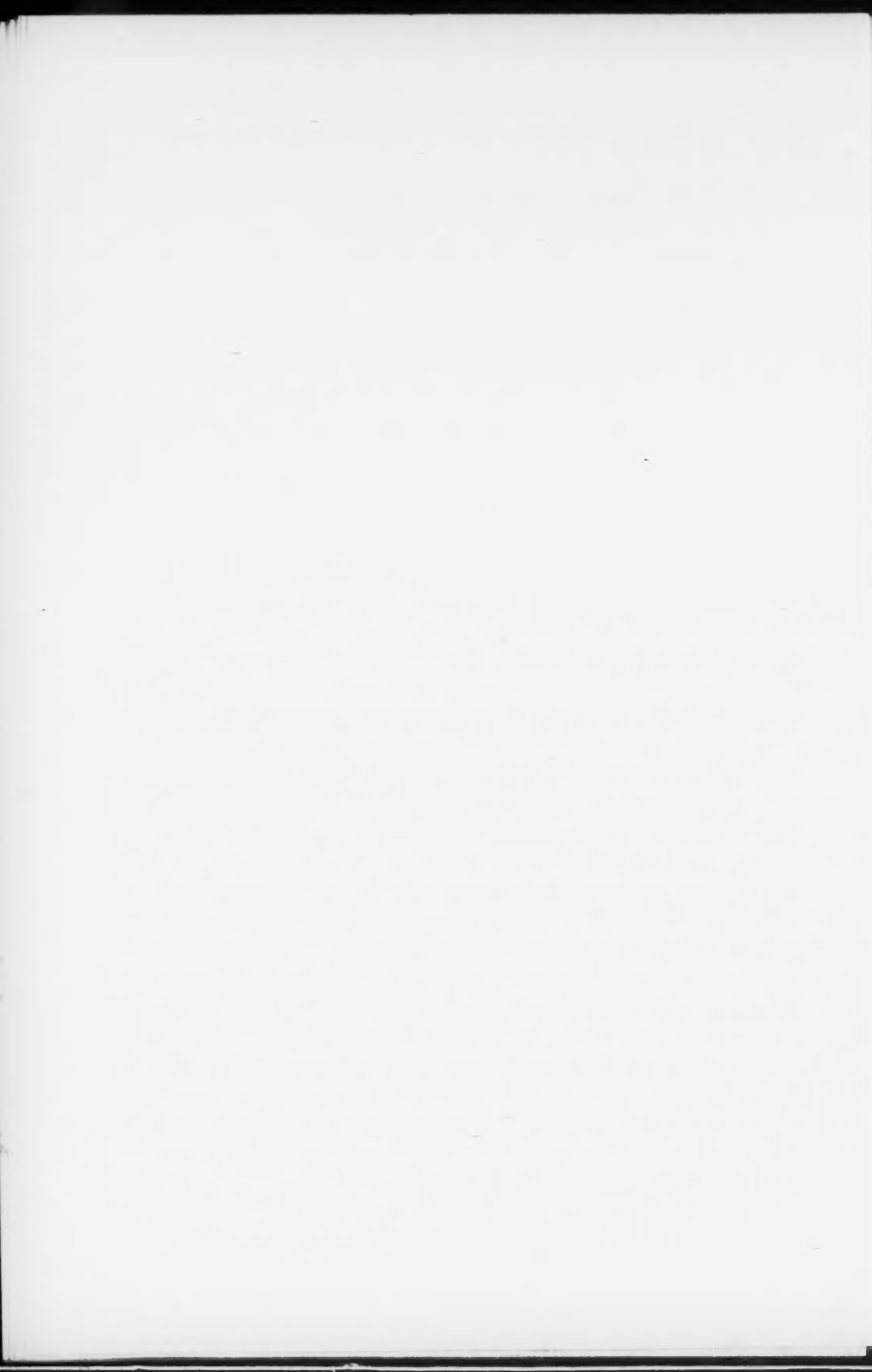
Appeal by defendant from a judgment of the District Court, Nassau County, (Decker, J., at trial and sentence) rendered on April 28, 1989 convicting him of two counts of Section 327 of the Code of Ordinances of the Town of Oyster Bay and imposing sentence of a conditional discharge that defendant remove the violation by June 30, 1989 or be subject to a fine of \$2100



plus \$10 per day for each additional day the violation remains after June 30, 1989.

Judgment of conviction unanimously modified on the law by vacating that portion of the sentence which sought to impose an additional fine of \$10.00 for each day the violation remains after June 30, 1989 and as so modified, affirmed.

Defendant was charged with maintaining, on the dates alleged, fencing in excess of the six foot height permitted under section 327 of the Town Ordinance. The testimony at the trial and the exhibits admitted into evidence were sufficient for the court to find that the structure constituted a fence which exceeded the height limitation specified in the ordinance. The dismissal of an earlier action charging a similar



violation was not dispositive of the instant action. Additionally, contrary to defendant's contentions, the courts have upheld provisions of local zoning laws based solely upon aesthetic considerations (see generally, 1 Anderson, New York Zoning Law and Practice (3rd ed) Sec. 7.16). The court notes that the portion of the sentence which provided for fines on a daily basis until the violation was removed was improper as the court is without authority to impose fines for violations committed in futuro (see, People v Koston, Appellate Term 9th and 10th Jud Dists, NYLJ June 17, 1988, leave to appeal denied 72 NY2d 920, 958). The other issues raised on this appeal were considered and found to be without merit.



DISTRICT COURT OF THE COUNTY OF NASSAU  
FOURTH DISTRICT : HICKSVILLE PART

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THE PEOPLE OF THE STATE OF NEW YORK  
Respondent,

vs.

PAUL J. CAFARO

Appellant

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Index No. 2920/87  
Filed: Jan 27, 1989

DECISION AFTER TRIAL

The defendant was charged in a nine count information with violations of the Town of Oyster Bay Code of Ordinances. The first two counts (\*) involve a perimeter fence at a height in violation of the ordinance.

The trial was held on November 2, 1988 before the Court in Hicksville. The People restricted their proof to the violations under counts I and II. Their witness was the





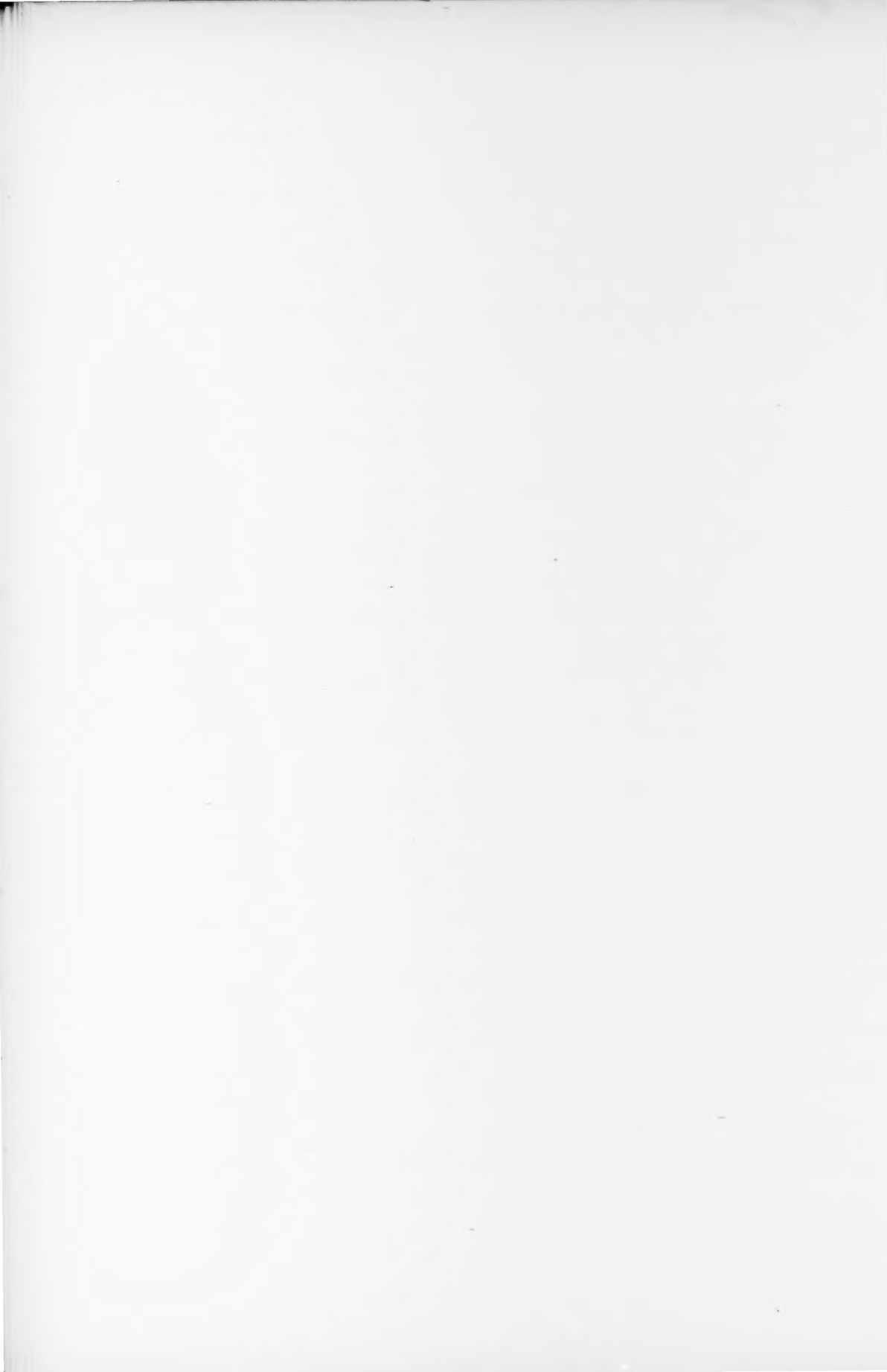
Chief Building Inspector for the Town who described the fencing materials surrounding defendant's property on three sides as 12 to 14 feet high and dangerously close to power lines. Photographs were admitted into evidence in support of the People's position that violations existed.

The defendant claims that what the People complain of is not fence but trellis and as such is not covered by the ordinance.

The Court has examined the material and memoranda submitted by both sides as well as the exhibits submitted and in evidence.

Section 327 of the Town of Oyster Bay Code of Ordinances requires that fences should not exceed six feet in height.

The Court finds that what the People describe as a fence on the defendant's



property violates the ordinance and must be removed. If the defendant wishes to maintain a fence on the border of his property, it must be of the proper material and height.

The defendant is to appear in Court on February 22, 1989 at 9:30 a.m. for sentencing.

Dated: January 26, 1989

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George K. Decker  
Judge, District Court  
of Nassau County

(\*) Counts I and II:

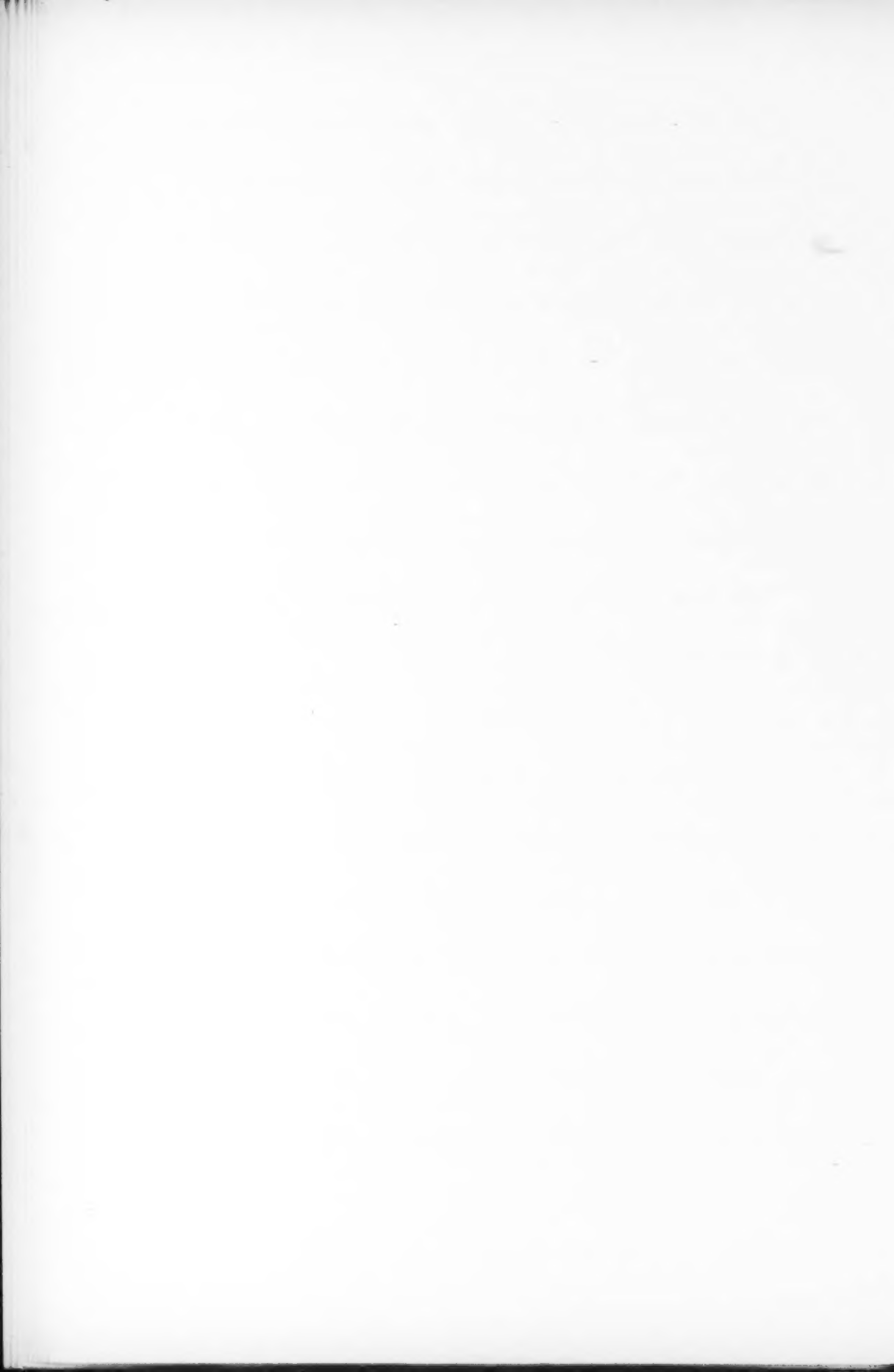
Alexander Pankoff, Chief Zoning Inspector, of the Town of Oyster Bay, Department of Planning and Development, Oyster Bay, New York, 11771, being duly sworn, deposes and says that on the 16th day of September 1987, the 8th, 9th and 22nd



days of October 1987, at premises located at; 214 Daniel Road North, North Massapequa, New York, in the Town of Oyster Bay, in the County of Nassau, also known as Section 52, Block 481, Lot 23, Zone D, on the Land and Tax Map in the County of Nassau, the defendant did willfully, wrongfully, and unlawfully violate, the provisions of the Code of Ordinances of the Town of Oyster Bay as follows:

COUNT I

Violation of the Town of Oyster Bay Code of Ordinances, Appendix A, Section 327, to wit: Deponent observed that approximately sixty linear feet (60) of fencing running easterly and westerly along the northern rear line, is made up of black plywood, wire, six foot (6') stockade below and as a



base with all the aforementioned parts and pieces and three inch (3") nails protruding to the rear, and further that all this is approximately ten feet (10') high. The height, and improper construction is not permitted and is a violation of the ordinance.

#### COUNT II

Violation of the Town of Oyster Bay Code of Ordinances, Appendix A, Section 327, to wit: Deponent observed that approximately sixty linear feet (60) of fencing running along the westerly perimeter was interwoven with assorted, so called trellises, odd pieces of panelling, and interwoven with each other and ranging in height from six feet (6') to eight (8) or nine (9) feet, parts of it are rotted and leaning outward





and all of the interwoven and odd pieces and height is not permitted and is a violation of the ordinance.



**AMENDMENT 1**  
**TO THE UNITED STATES CONSTITUTION**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



**AMENDMENT 5**  
**TO THE UNITED STATES CONSTITUTION**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



AMENDMENT 8  
TO THE UNITED STATES CONSTITUTION

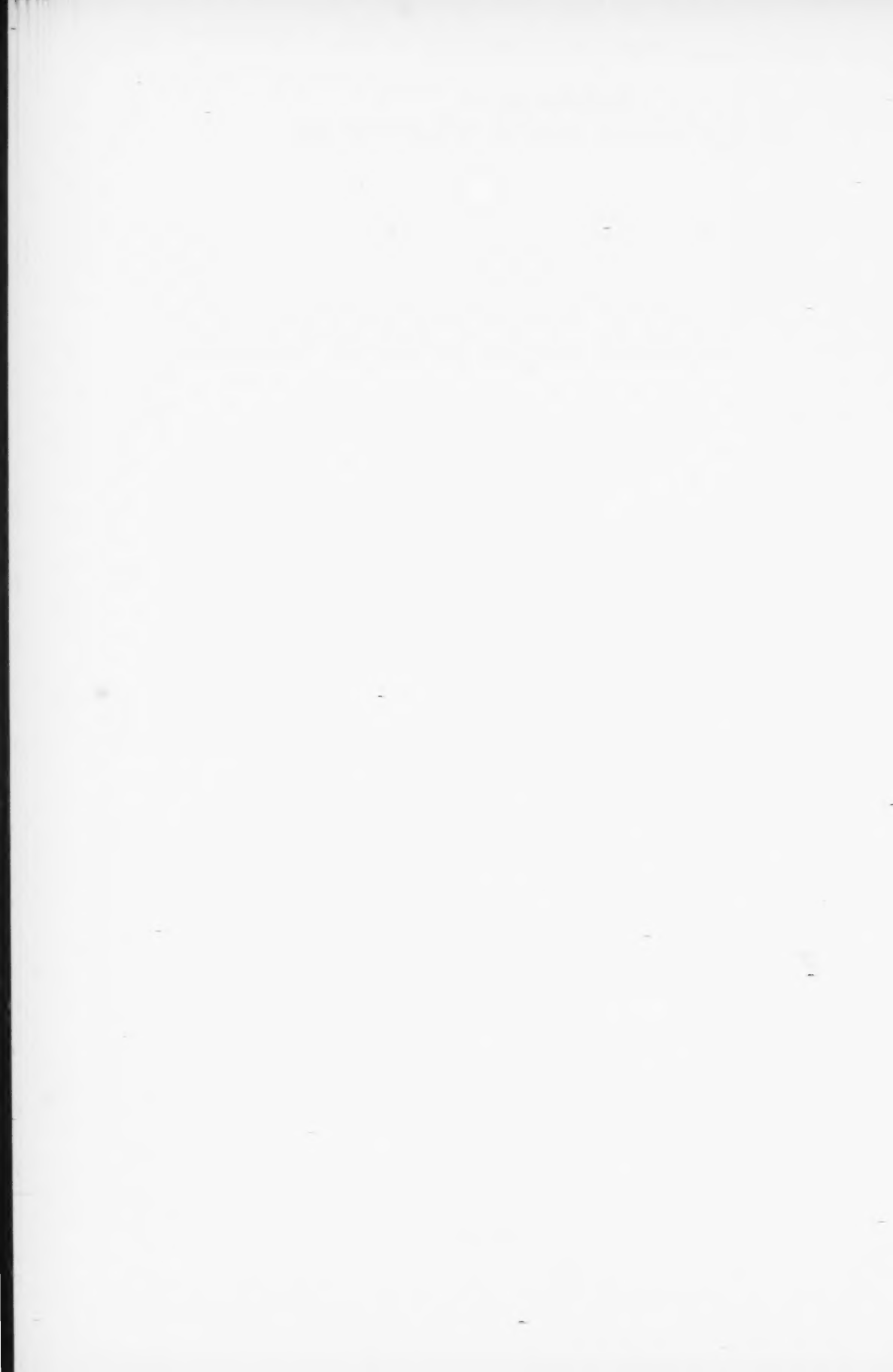
Excessive bail shall not be required,  
nor excessive fines imposed, nor cruel and  
unusual punishments inflicted.





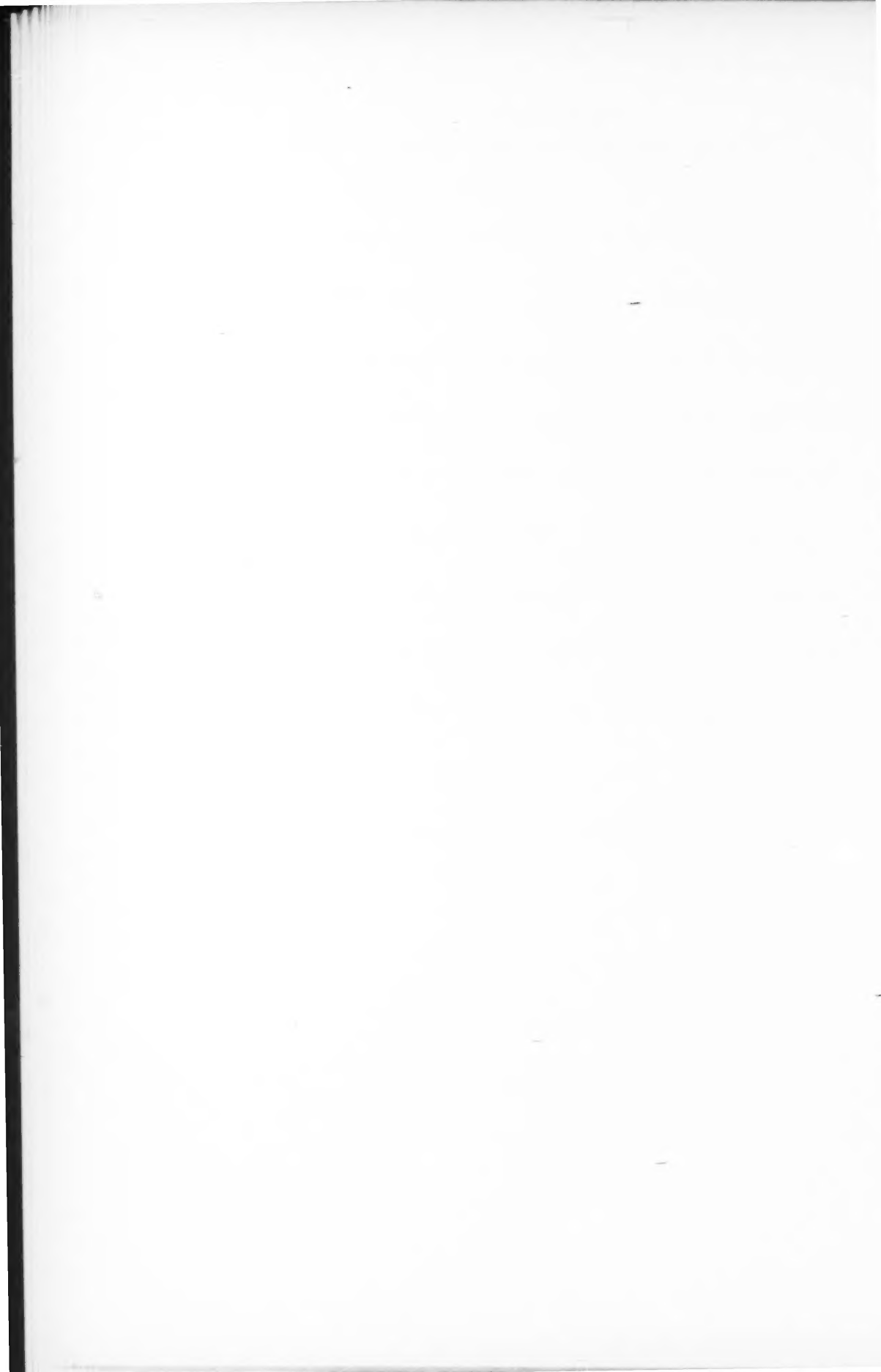
AMENDMENT 9  
TO THE UNITED STATES CONSTITUTION

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.



**AMENDMENT 14**  
**TO THE UNITED STATES CONSTITUTION**

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## NEW YORK STATE STATUTES

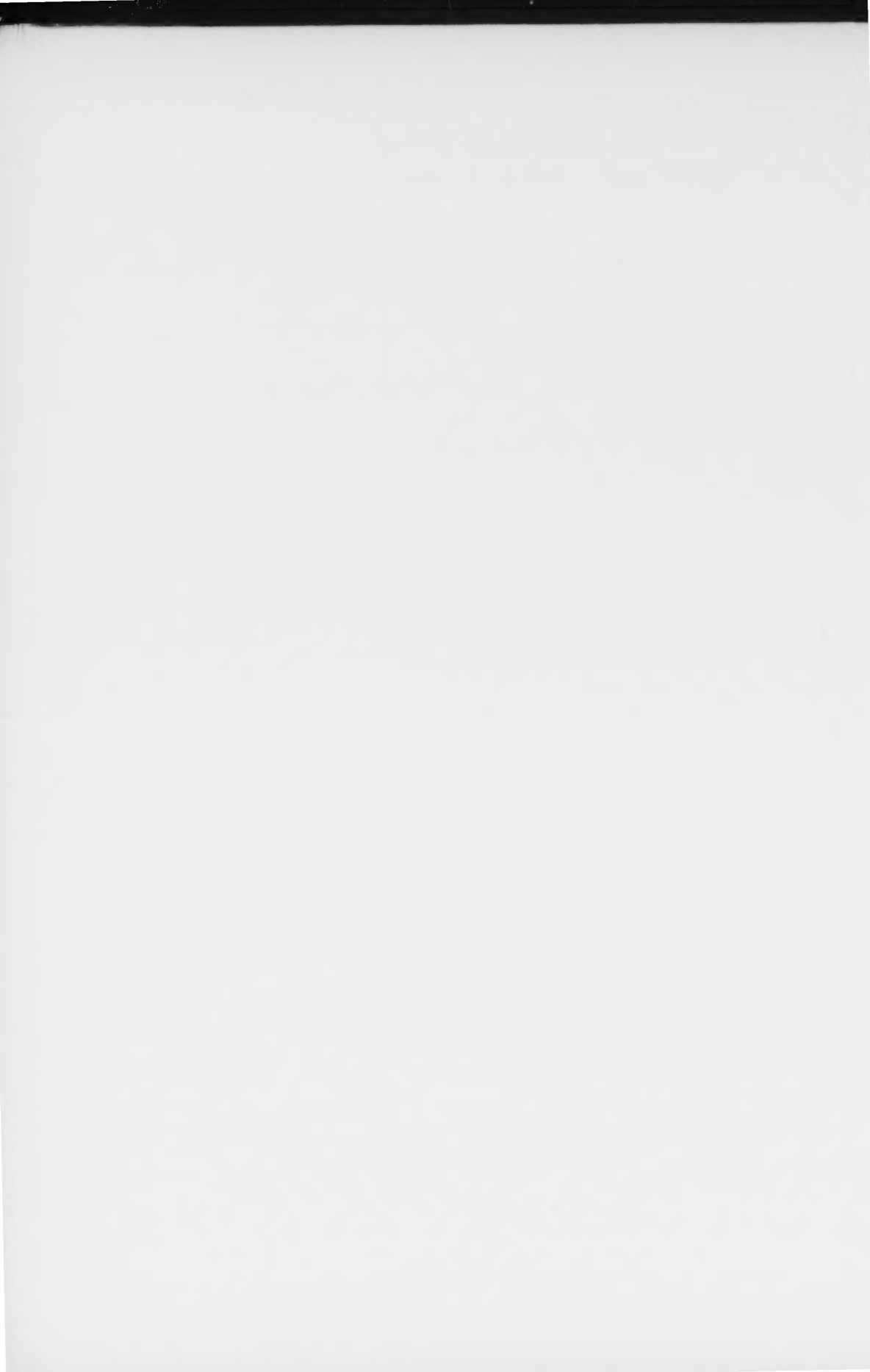
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## APPENDIX I



NEW YORK STATE  
PENAL LAW, TITLE E, SECTION 80.05 (4)

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.





NEW YORK STATE  
PENAL LAW, TITLE E, SECTION 80.15

Multiple offenses. Where a person is convicted of two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, and the court imposes a sentence of imprisonment or a fine or both for one of the offenses, a fine shall not be imposed for the other.

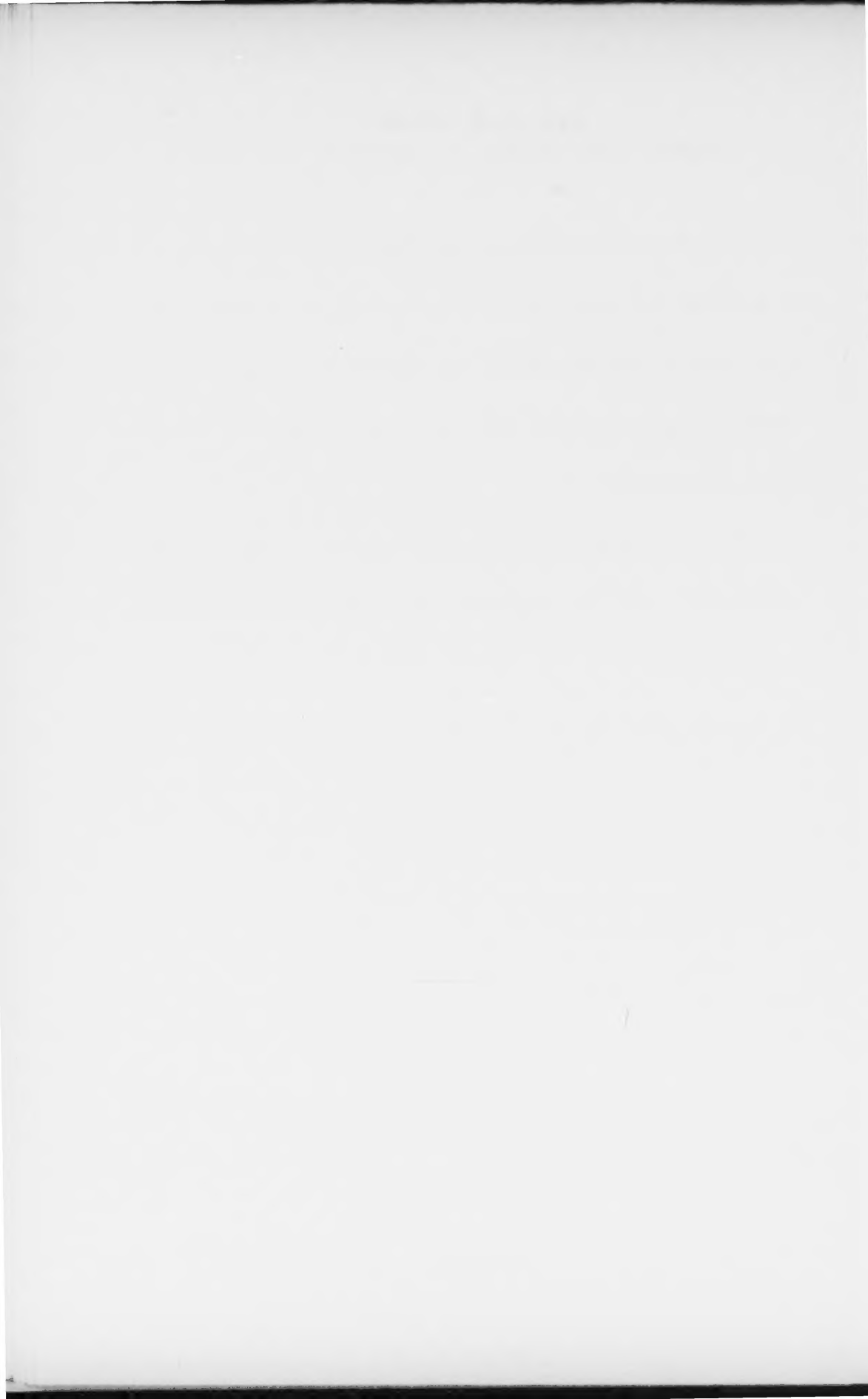


NEW YORK STATE  
PENAL LAW, TITLE I, SECTION 140.10(a)

Criminal trespass in the third degree.

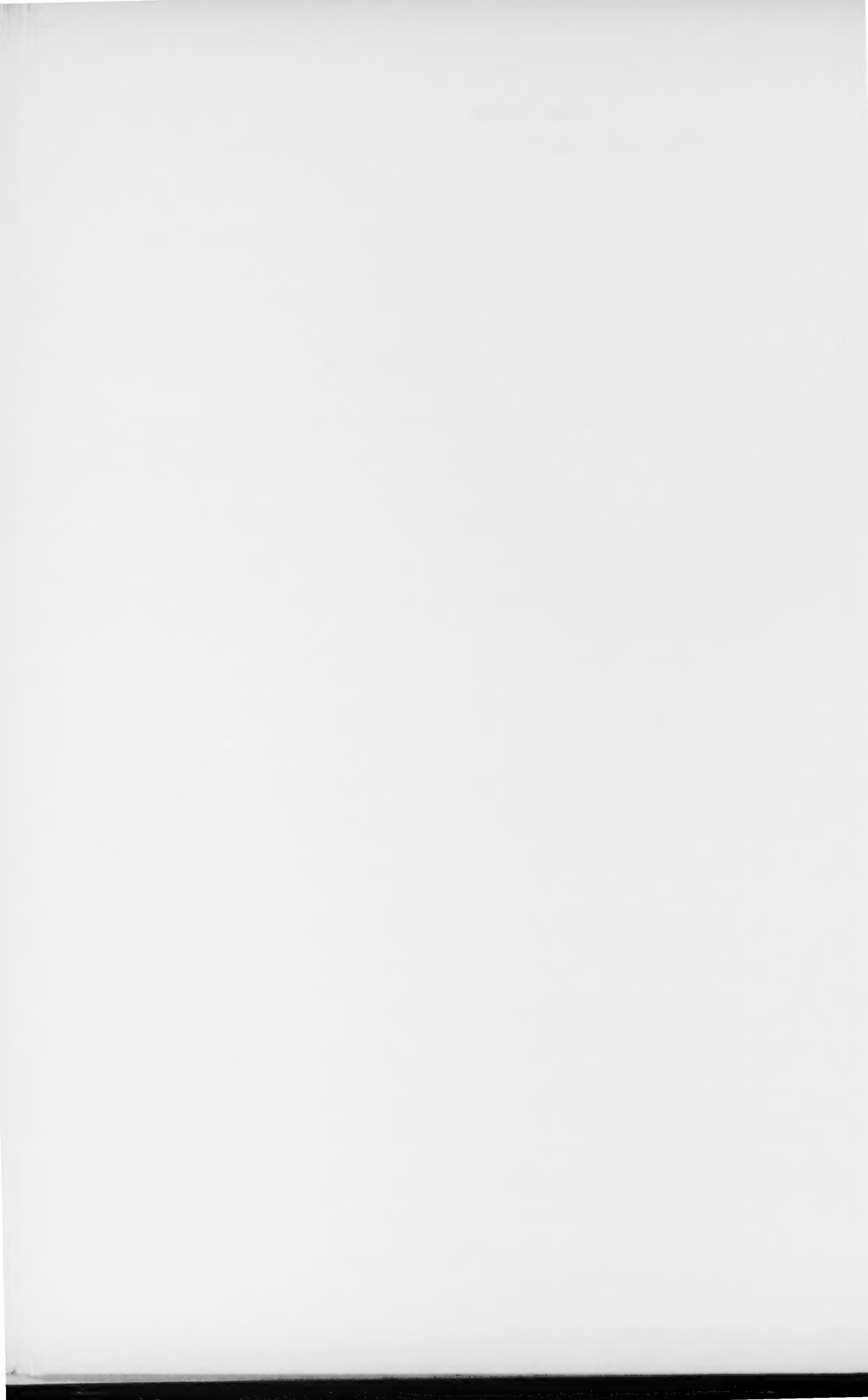
a person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property

(a) which is fenced or otherwise enclosed in a manner designed to exclude intruders;



NEW YORK STATE  
TOWN LAW, ARTICLE 16, SECTION 261

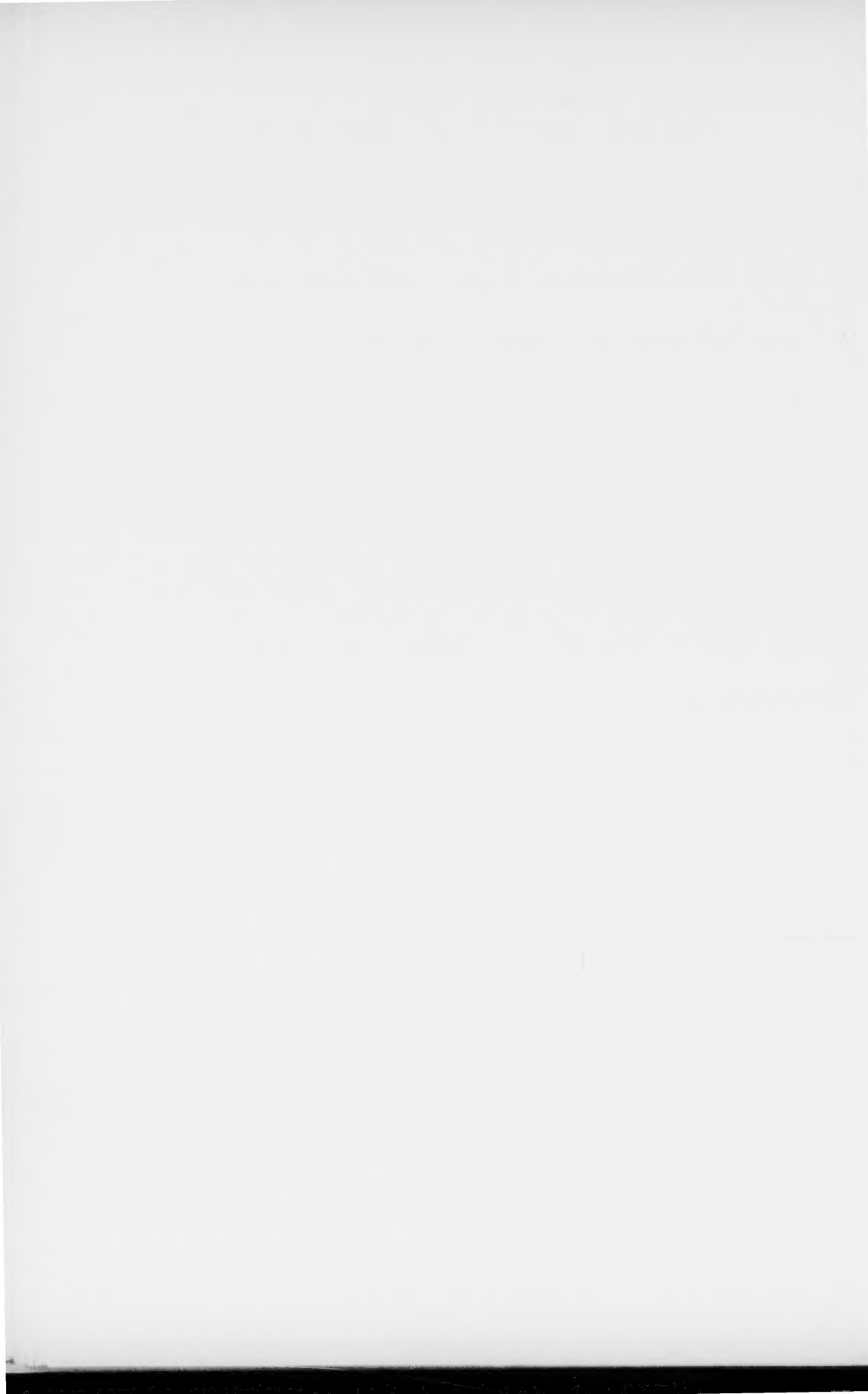
Grant of power; For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by ordinance to regulate ...



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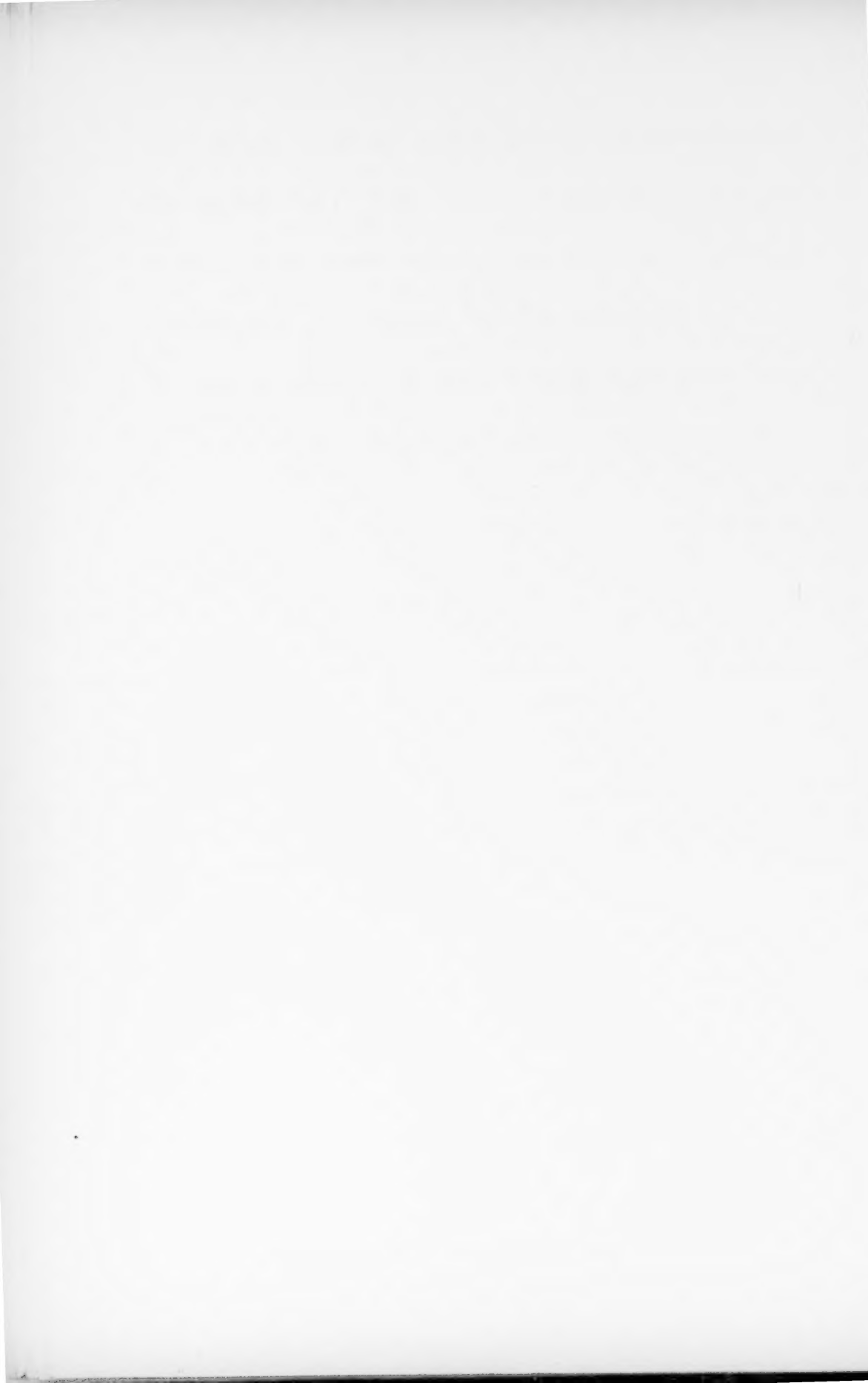
NEW YORK STATE  
TOWN LAW, ARTICLE 16, SECTION 263

Purposes in view; regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable





consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.



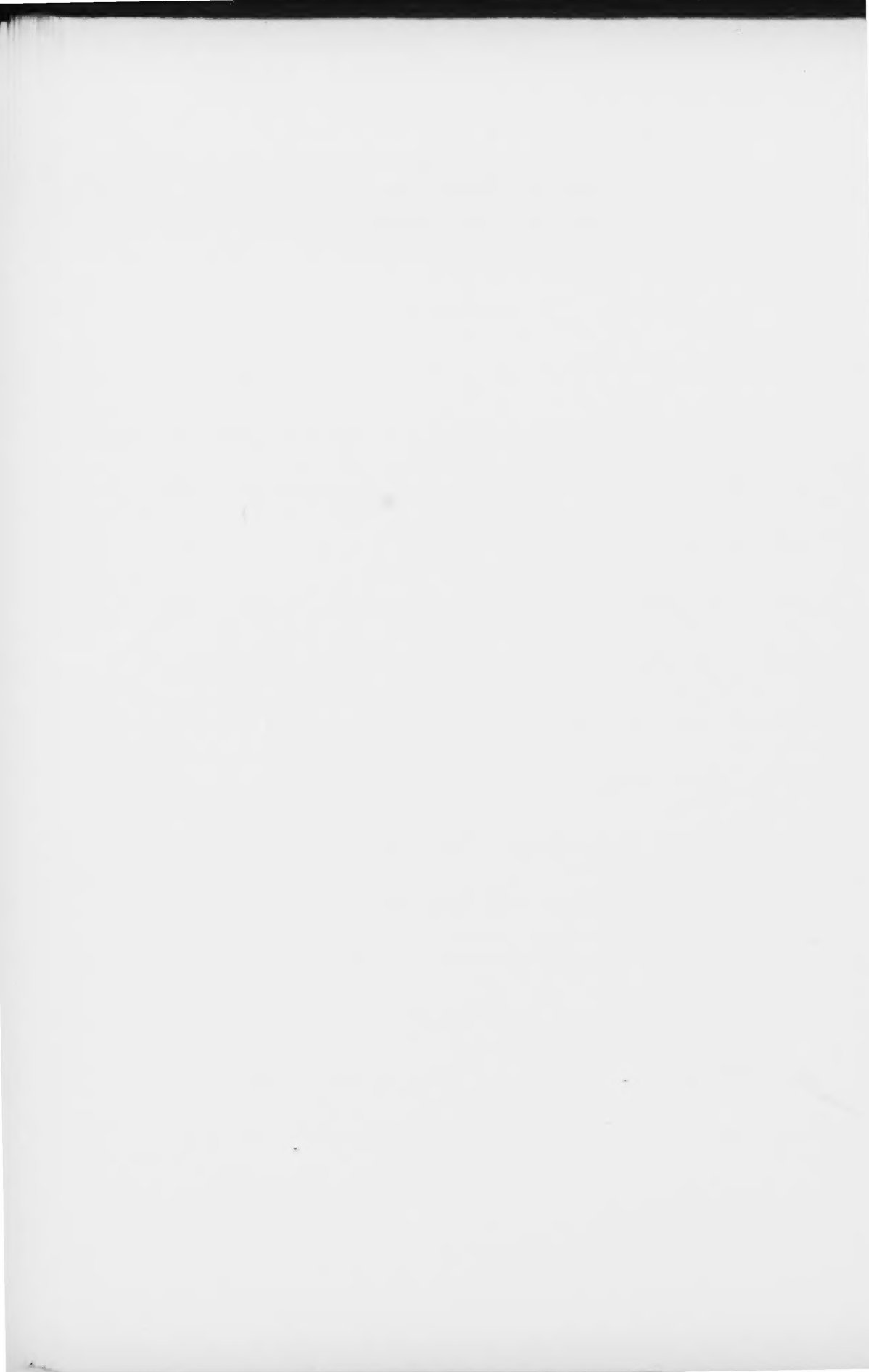
NEW YORK STATE  
TOWN LAW, ARTICLE 16, SECTION 268(1)

Enforcement. (Violations are deemed misdemeanors) for the purpose of conferring jurisdiction upon the courts ... and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.



TOWN OF OYSTER BAY, NEW YORK  
CODE OF ORDINANCES  
ZONING, SECTION 327, OR  
SECTION 246-144 (AMENDED 8-9-88)

Fences. In D residence districts, a fence as defined in this Ordinance (Chapter) not exceeding six (6) feet in height, may be erected on the rear lot line, portions of the side lot lines and interior portions of the lot, provided that such fence along the rear, sides and within the lot shall not exceed toward the street a greater distance than the required front setback as stated within this Ordinance (Chapter) or the front setback of the dwelling on the property, whichever setback is greater. With respect to all other lot lines, a fence not exceeding four (4) feet in height may be erected provided that the height of any



fence erected along any front property line shall be measured from the existing elevation of the center line of the road adjacent to such a fence, and provided further that such height, so measured, shall not exceed two and one-half (2.5) feet at any point within a radius of thirty (30) feet of the corner formed by any intersecting roads or highways. The provisions herein shall apply to hedges or other densely growing shrubbery or trees known as living fences ("living fences").



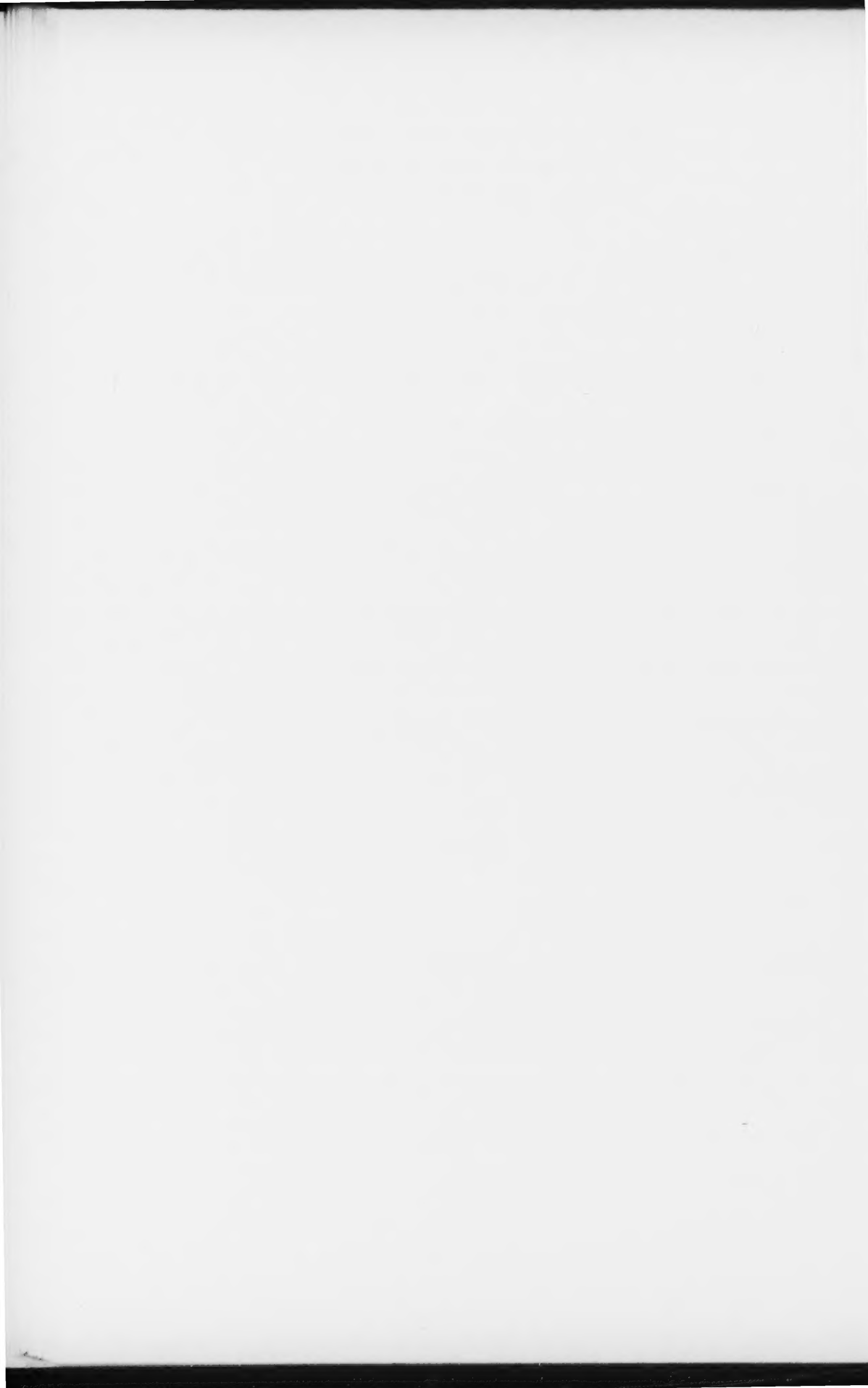


TOWN OF OYSTER BAY, NEW YORK  
CODE OF ORDINANCES  
ZONING, SECTION 246-39(E)

Fencing.

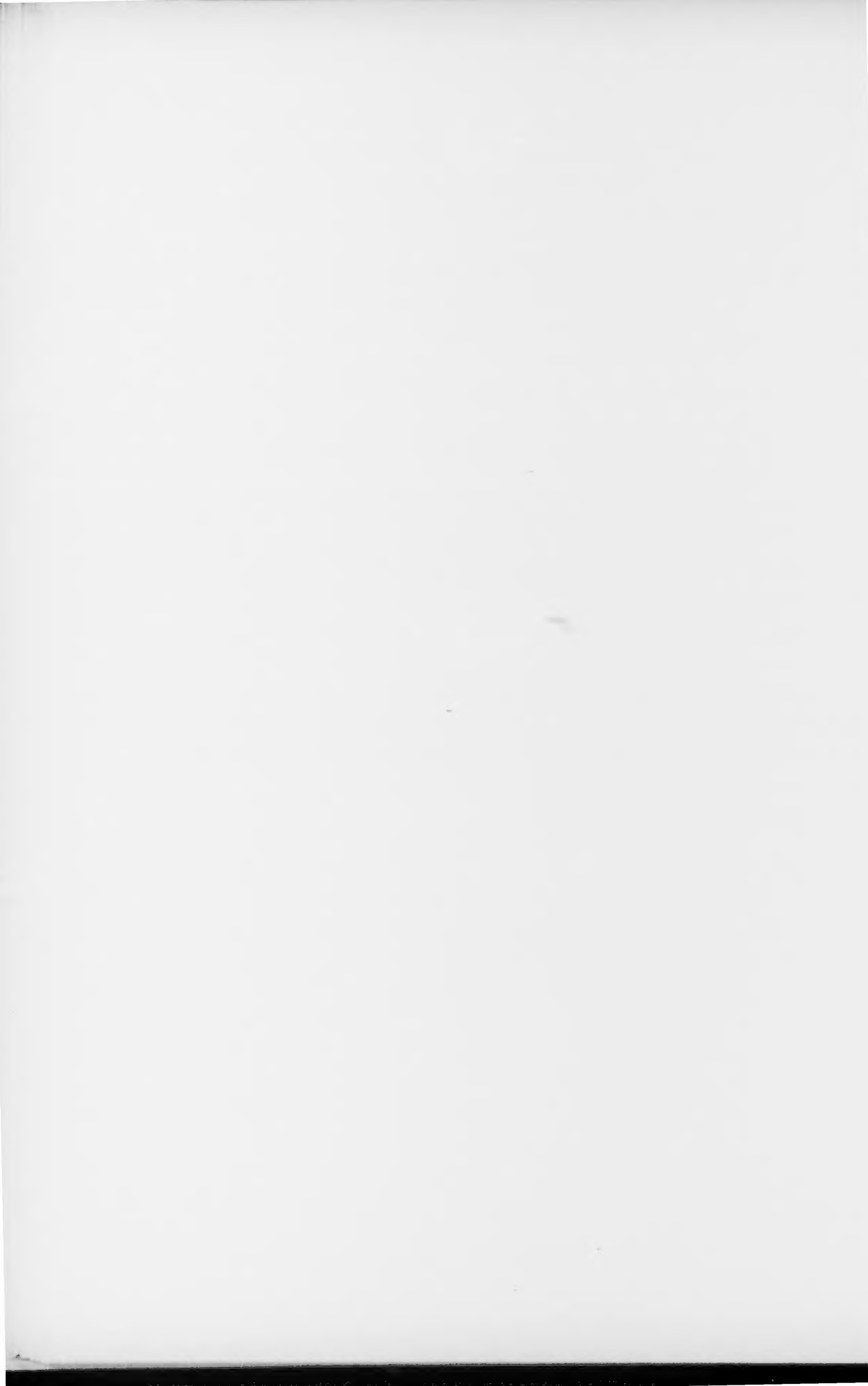
(1) Adequate fencing shall be provided to prevent accidental entry and unauthorized use of the pool, which fencing shall be at least two (2) feet distant from the pool. Such fencing shall be erected and maintained so as to completely enclose at least the outside perimeter of the pool, or the perimeter yard in which the pool is situated.

(2) Fences constructed under the provisions of this section shall be constructed of metal, wood or other suitable material, shall contain no openings or projections which would permit hand or toe holds sufficient for climbing, as determined



by the Department of Planning and Development. The fence shall be at least four (4) feet in height from ground and be no more than one (1) inch from the ground at the bottom and be supported by posts that are at least eight (8) feet on center.

(3) Gates or doors. All gates or doors must be equipped with a self closing, self latching device located on the inside of the gate or door. Such gate or door must be securely closed and locked at all times when not in actual use.



TOWN OF OYSTER BAY, NEW YORK  
CODE OF ORDINANCES  
ZONING, SECTION 326

Accessory buildings.

"In a D Residence District accessory buildings may ... not exceed eighteen (18) feet in height ...".



## FEDERAL QUESTIONS RAISED

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Court of Appeals.. .....	J(10-11)





**FEDERAL QUESTIONS RAISED  
IN COURT OF FIRST INSTANCE**

In Defendants Memorandum submitted to the trial court stated:

(1) "The issue in this case is whether the defendant's inalienable right to the pursuit of happiness (granted by the Constitution of the United States of America to all its citizens) includes the planting on defendant's private property, safe and harmless living vines, that require supporting trellises to provide the vines a normal growth height similar to other peoples shrubbery (as vines are climbing plants unlike bushes or shrubbery which are woody plants which do not require support), without the plaintiff imposing his decorative tastes and depriving the defendant his right to the peaceful enjoyment of life and liberty by distorting the truth and redefining the defendants safe and harmless, spaced, non-enclosing, separate, distint, discontinuous and decorative trellises (7.5 to 10 feet tall) supporting living vines (to a normal and similar height other peoples shrubbery can grow), on his own property and interior to the boundary of his property, as a fence, when plaintiff and plaintiffs witness know the difference between a trellis and a fence, as testified to under oath making this improper conduct an obstruction of justice."

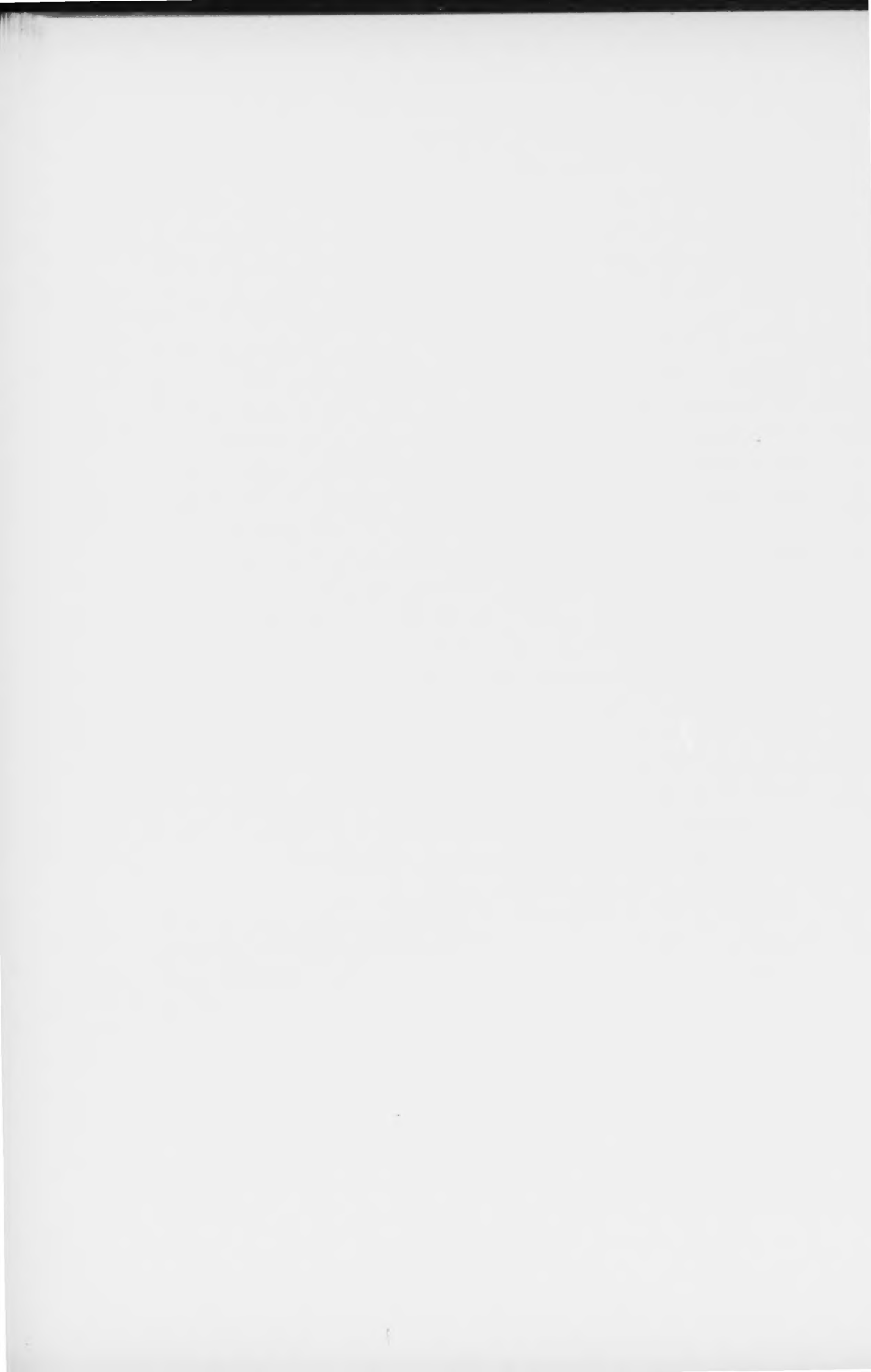


(2) "Plaintiff tried to violate the defendant's civil, human, religious and constitutional rights once before in 1983 when he called defendant's patio umbrellas a fence, but the judge dismissed and threw the case out of court."

(3) "For the defendant to be solely the object of selective enforcement of this "trellis law", in violation of the 14th amendment, makes it a cruel and unusual punishment, in violation of the 8th amendment, and punishment under a "trellis law" that does not exist for trellises and that is selectively applied denies just and fair due process, in violation of the 5th amendment, and to prohibit the God given right to grow ivy on ones private property in appreciation of Nature and God's creations, in the manner (upon harmless supporting trellise) that brings a spiritual joy equivalent to what other people feel when planting their shrubbery, is a violation of the 1st amendment of the Constitution of the United States."

(4) "Defendant has consistently demonstrated with credible and convincing evidence and testimony that the plaintiff did so intentionally, unjustifiably and with malice to do harm to the defendant, distort the truth and fabricate a story that defendants trellises are a fence, in direct contradiction of the prima facie evidence in this memorandum, supporting defendant's previous testimony and submissions to the court showing that the defendant's trellises are not a fence."

APPENDIX J(2)



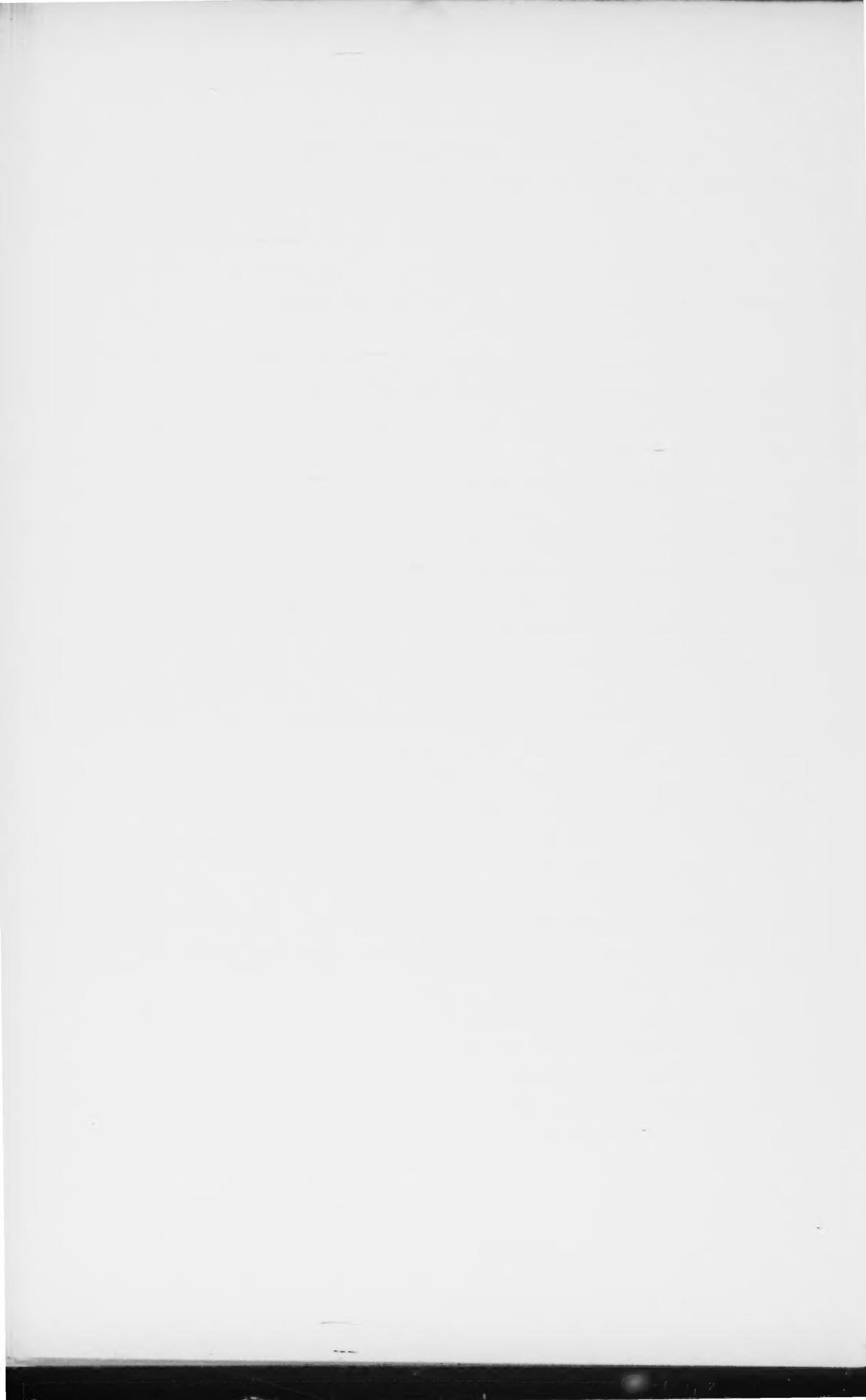
**FEDERAL QUESTIONS RAISED  
ON APPEAL TO THE APPELLATE TERM OF THE  
SUPREME COURT FOR THE 9TH AND 10TH DISTRICTS**

In this Appellant's response to Respondant's appellant brief stated:

(1) "Society, through its law makers has defined certain actions to be criminal. This was done so that an individual could demand from others, including municiple corporations, certain regularities of behavior, and to accord to others the expectation that he too will behave predictably. Consequently, for the purpose of securing regularity in important kinds of interpersonal behavior, societies enact laws, the violation of which is a crime."

(a) "Nowhere in this Nation has the planting of rose or ivy vines on ones private property, nor the use of a supporting arbor, made up of trellis lattice, 2x3's, lauan, etc., been defined by the legislature as a criminal action."

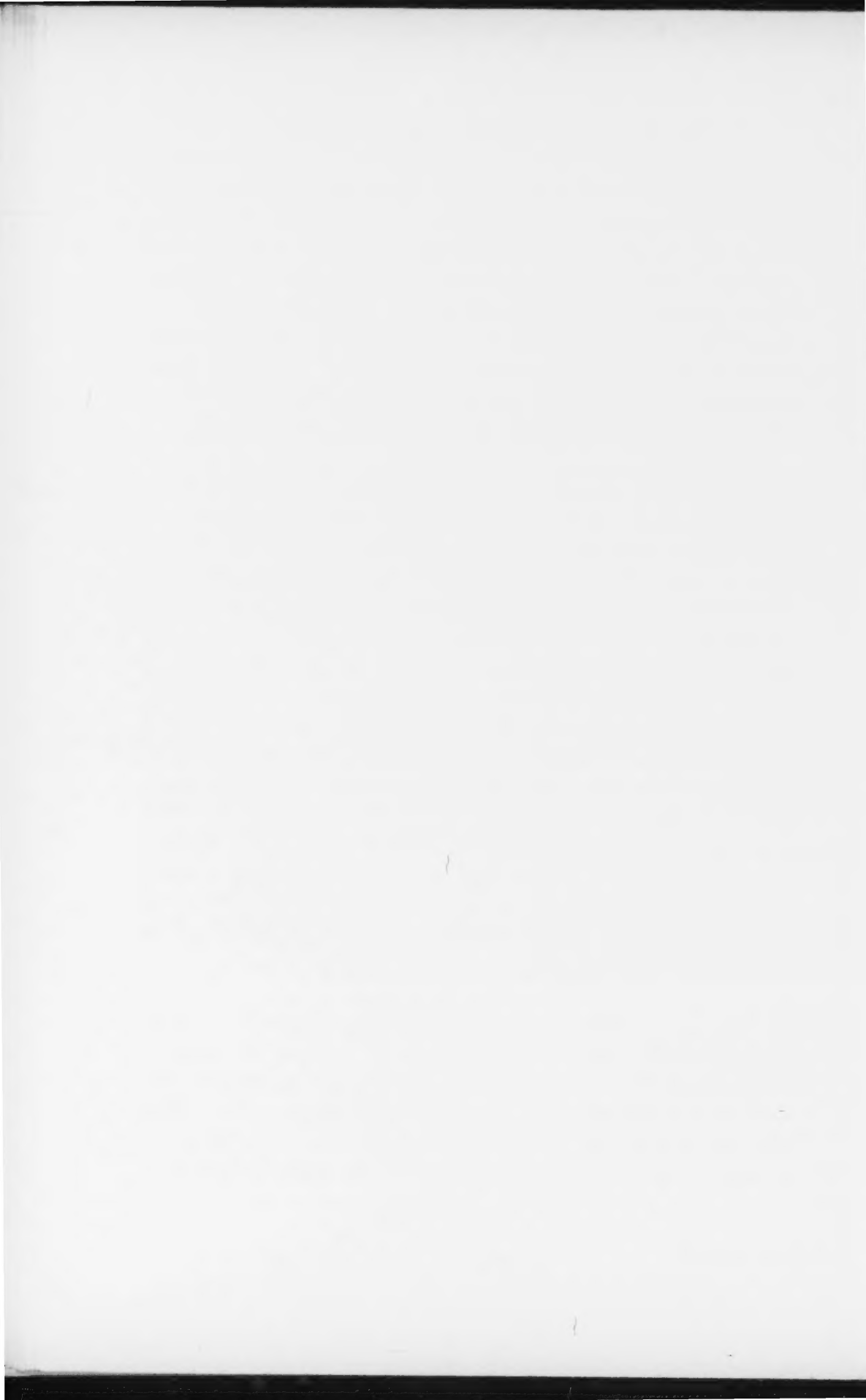
(b) "Our founding Fathers were men of strong will and determination, to ensure to us the blessings of liberty, they, required that the activities of government not exceed limits specified by law. They created three autonomous branches of government, to divide unlimited power, each to check any imbalance in the coercive activities of the others."



(c) "Government, like the individual or a corporation, is expected to behave predictably and therefore is required to act in accordance with law - the Constitution - and the Constitution requires that unlimited powers not be in the hands of any one individual, governmental body or corporation, the violation of this Constitutional imperative is a crime and punishment for this crime should be exemplary and severe."

(d) "I built my home over the last two decades with a plan and a purpose to fashion it in a victorian mold, it was done with my own two hands on weekends. I<sup>1</sup> invested considerable time, money and effort in the development of my property, and it expresses my individual character. It is my showplace and the architecture of my home including its rose arbors have a distinctive victorian antiquity. I happen to appreciate, and have a sentimental value for, things historical and I am particularly attracted to the victorian era. I have implemented at great expense a victorian desing to all my real property. I am granted this right of expression by the first amendment of the Constitution."

(e) "The plaintiffs illegal and discriminatory exercise of police power (consistent with his pattern of intentional and purposeful discrimination in the administration of an otherwise nondiscriminatory law), has no relation to





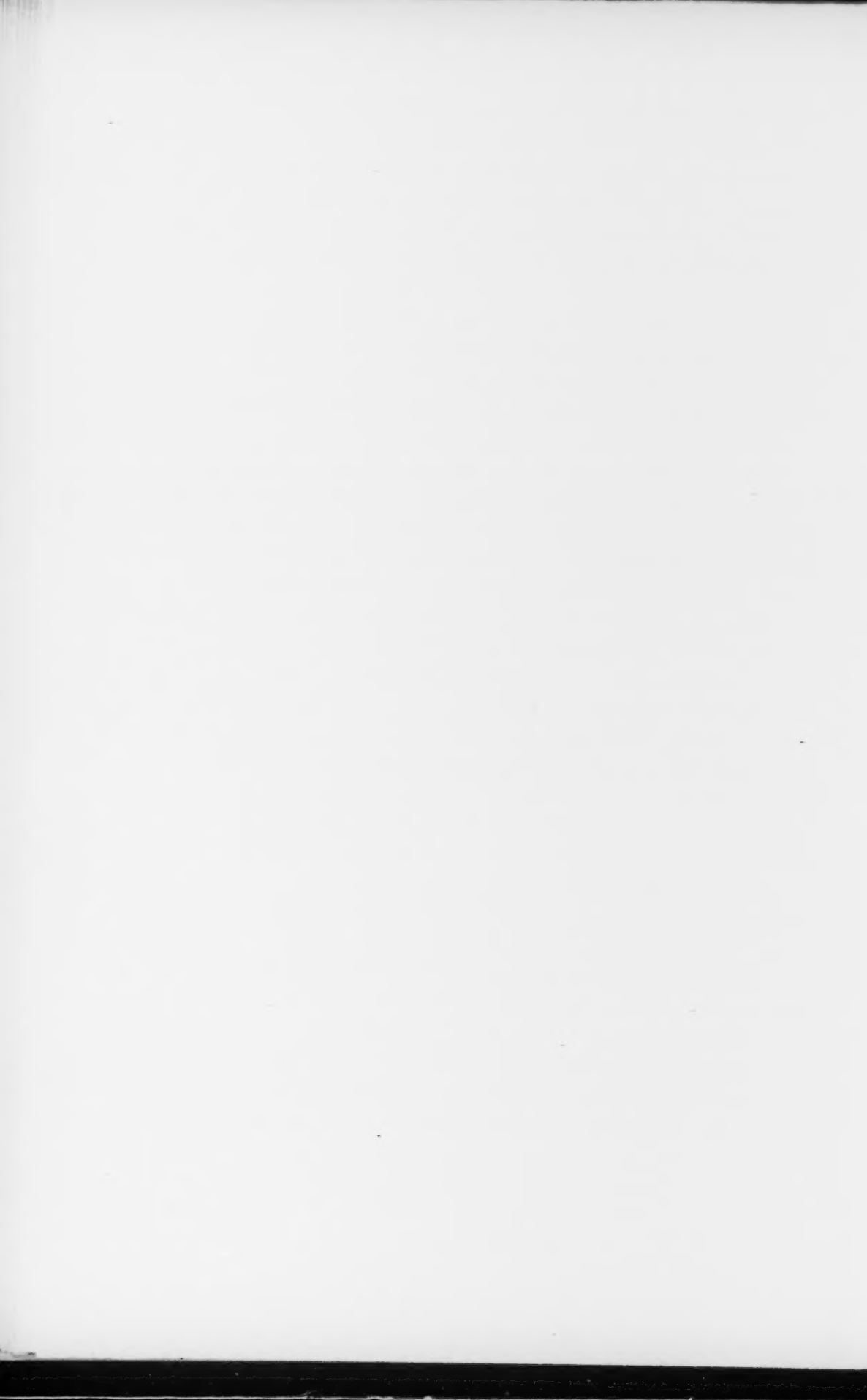
public health, morals, safety or welfare. Both, the illegal construction (of the fence ordinance) and mis-use of police power is highly selective and discriminatory and should be set aside by this court as unconstitutional, ultra vires, and void."

(2) In my brief clarifying the Constitutional issues and the conflict with fence law as developed over our history as a Nation, quoted from American Jurisprudence:

(a) "Generally, a fence is an INCLOSING (structure or barrier) about a field or other space, or about any object, intended to PREVENT INTRUSION from without OR STRAYING from within. WITH RESPECT TO REAL PROPERTY, it is a visible or tangible obstruction interposed between two portions of land so as to part off and SHUT IN THE LAND ..." (emphasis added); FENCES, 35 Am.Jur.2d, Sec. 2, p. 407; FENCES, C.J.S., Sec. 1., p. 258; Van Gorder v. Eastchester Estates, Inc., 207 Misc 335, 137 NYS2d 789; Shamberg v. Lincoln, 174 Neb. 146, 116 N.W.2d 18 (1962); Parrish v. Hainlen, 124 Colo 229, 236 P2d 115; Polizzi v. Lotz, 240 La 734, 125 So2d 146 ... etc.

(3) In this Appellant's response to the Respondent's brief stated:

(a) "The plaintiff and his attorney's are not exempt from the equal protection clause of the Federal Constitution. It applies to



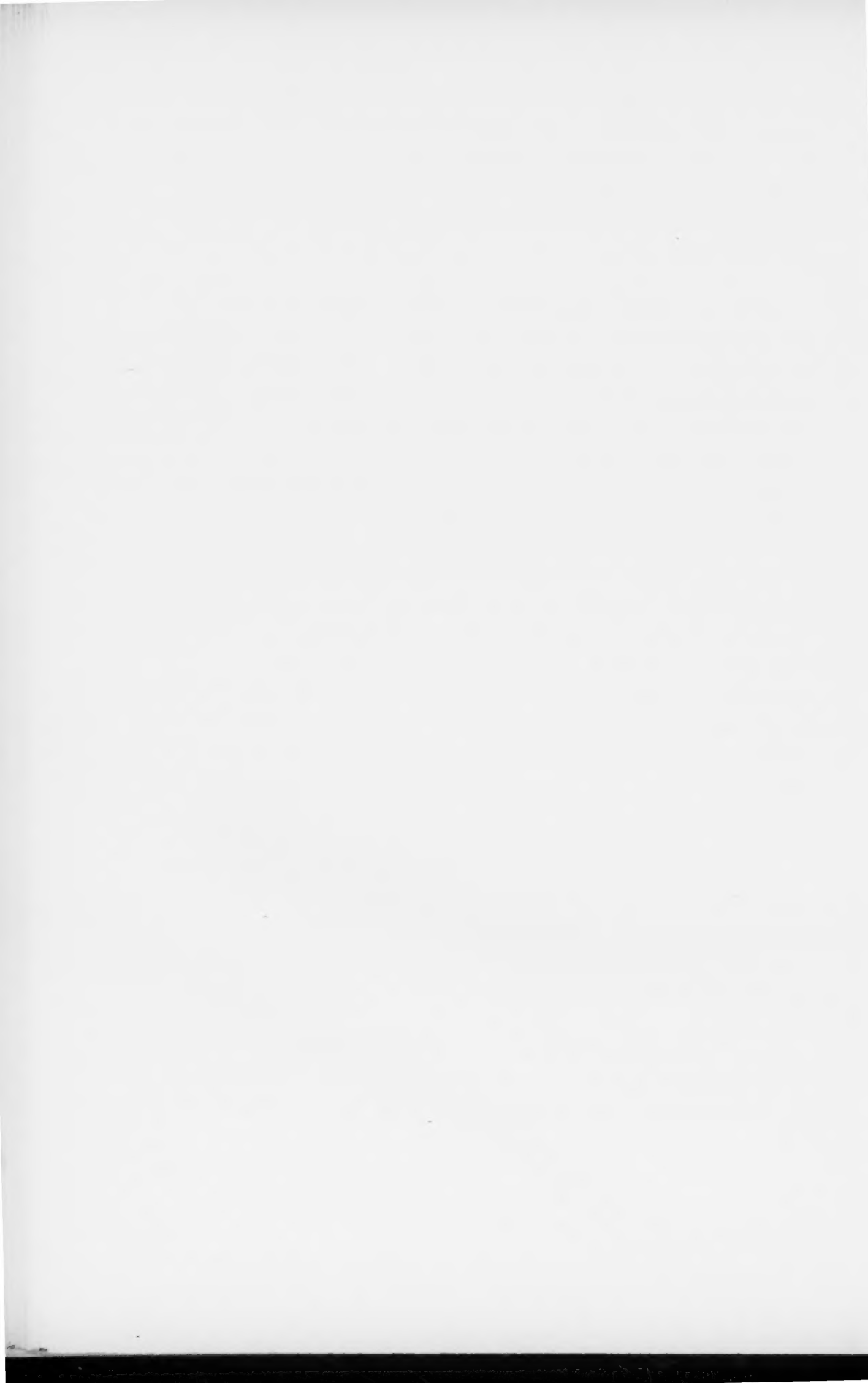
all agencies of the government and whoever else, by virtue of public position under State government, deprives another of any right protected by the fourteenth amendment and thereby violates the Constitutional inhibition."

(b) "The discriminatory enforcement of an irrational construction of the fence ordinance practiced by a munipcle corporation over the years, against this defendant, should have been treated, like in 1983, as an application to the court for dismissal, or quashing of the prosecution, upon Constitutional grounds."

(c) "The rules governing an individuals rights and range of choice arises out of the Constitution, and an individuals value system; the set of beliefs, attitudes, and values that motivate his choice or preferance for anything from religion to rose arbors that comprise his lifestyle are protected by Constitutional principles."

(d) "The Town of Oyster Bay's illegally discriminatory and irrational actions against this defendant, under color of law, to deny this homeowner his Constitutional right to his own lifestyle is challenged on several grounds:"

"... Its violative of fundamental human rights and first amendment principles ... a selective, unreasonable and discriminatory



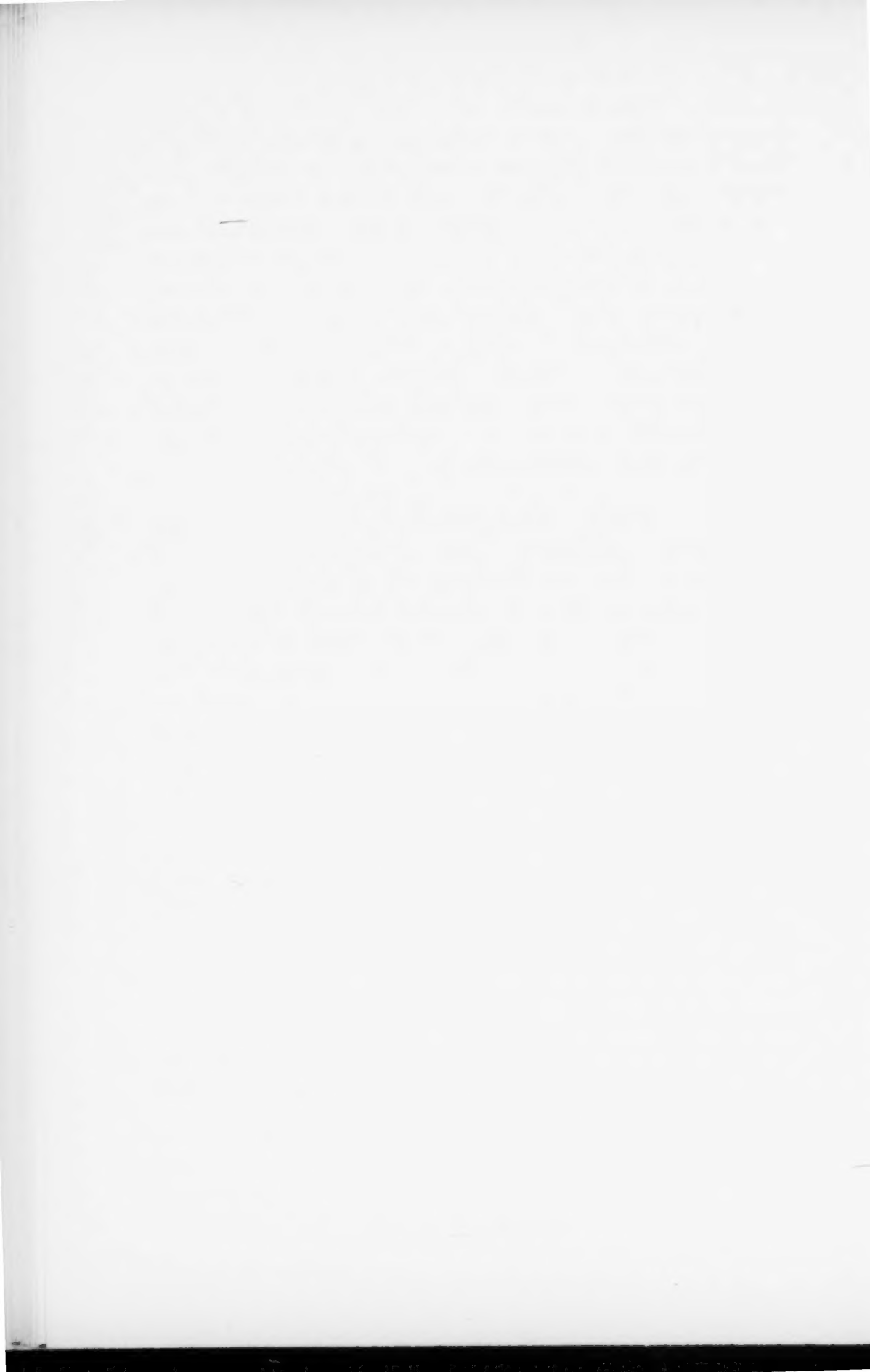
enforcement, under color of an illegal construction of valid law, violative of fundamental fourteenth amendment principles ... resulted in an excessively harsh fine and punishment which violates fundamental eighth amendment principles ... is not a reasonable or legitimate interest of a municle corporation (to) violate fundamental ninth amendment principles ... denying this defendant equal protection of law ... is a violation of the Constitutional imperative and mandate against the arrogation of power in a few hands ... and violates principles as they have been understood by the traditions of our people and our law. This is antithetical to the Nation's experience and ideology which protects an individuals freedom of choice, privacy and lifestyle as part of an integrated society."

(e) "Humanity, rights and happiness is the moral imperative that takes precedence over the exercise of unconstrained police power. The Framers of our Constitution knew this as we also know. Rights are interperated in the Constitution as needs and desires for religion, speech, etc. and it is explicit in stating that rights not enumerated in the body of the Constitution should not be construed to be denied to the people by the government or by a corporation."



(f) "The intent of the United States Constitution is clearly stated in its preamble that it was conceived to secure the blessings of liberty (our human rights), to ourselves and our posterity by establishing justice (humanity) and to insure domestic tranquility (happiness). This was the moral imperative for which our founding fathers duly ordained and established our Constitution. They were worried about excesses under the guise of police power that would strip us of our human rights, humanity and happiness."

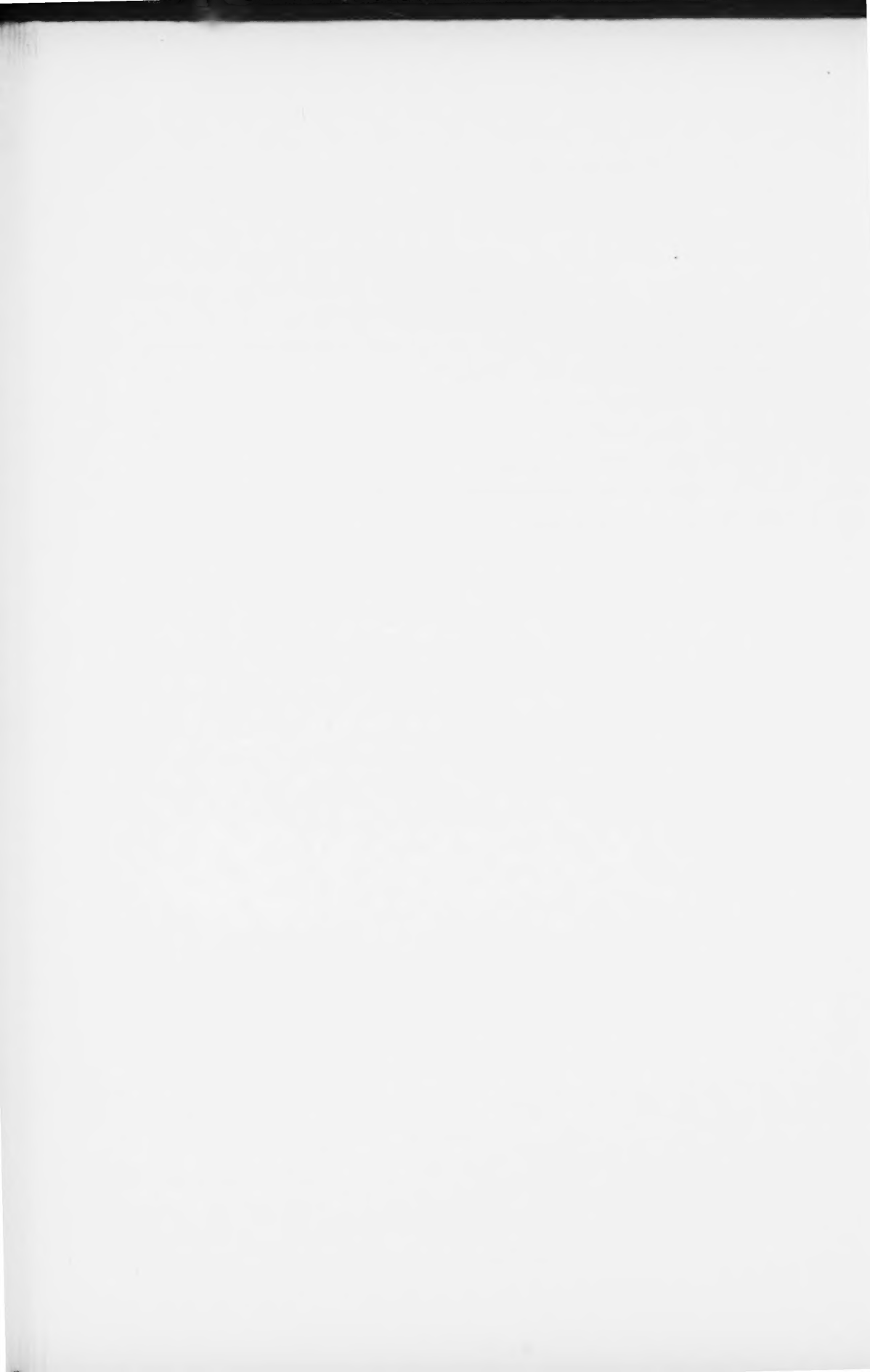
(g) "The Constitution is the only authority capable of ensuring that unconstrained activities of a government or a corporation do not exceed limits specified by law. But, we well know, and history is the proof that the arrogation of unconstrained power can even be used to overrule Constitutional principles and human rights. At that point tyranny will have taken full root and the blessings of liberty, that the framers of our Constitution so carefully passed to us, will be lost to our posterity and replaced with unconstrained unlimited police power. The Constitution not only forbids discriminatory laws making distinctions without rational basis, it also forbids the discriminatory enforcement of nondiscriminatory laws ... in violation of the equal protection clause of the fourteenth amendment of the United States Constitution."





(h) "Wherefore, in light of the history of the First, Eighth, Ninth and Fourteenth Amendment principles, Decisional law, State law, Town law and basic Human Rights as outlined above and applying their requirements to the instant case, and in view of all that has been said herein, this defendant requests this court to hold all the plaintiff's actions at issue ultra vires, unconstitutional, invalid and void and that the judgment and sentence of the trial court be reversed on the law and the facts, with prejudice.

)



**FEDERAL QUESTIONS RAISED  
ON APPEAL TO THE NEW YORK STATE  
COURT OF APPEALS**

In this Appellant's application for leave to appeal to the New York Court of Appeals stated:

(1) "That important questions of law have been violated by the plaintiff and erroneously affirmed by the lower courts in the above captioned case. This case should be reviewed by the New York State Court of Appeals, not only for the safety and benefit of the public welfare at large but because the decision of the lower court is clearly in error of law and this defendant's Constitutional rights."

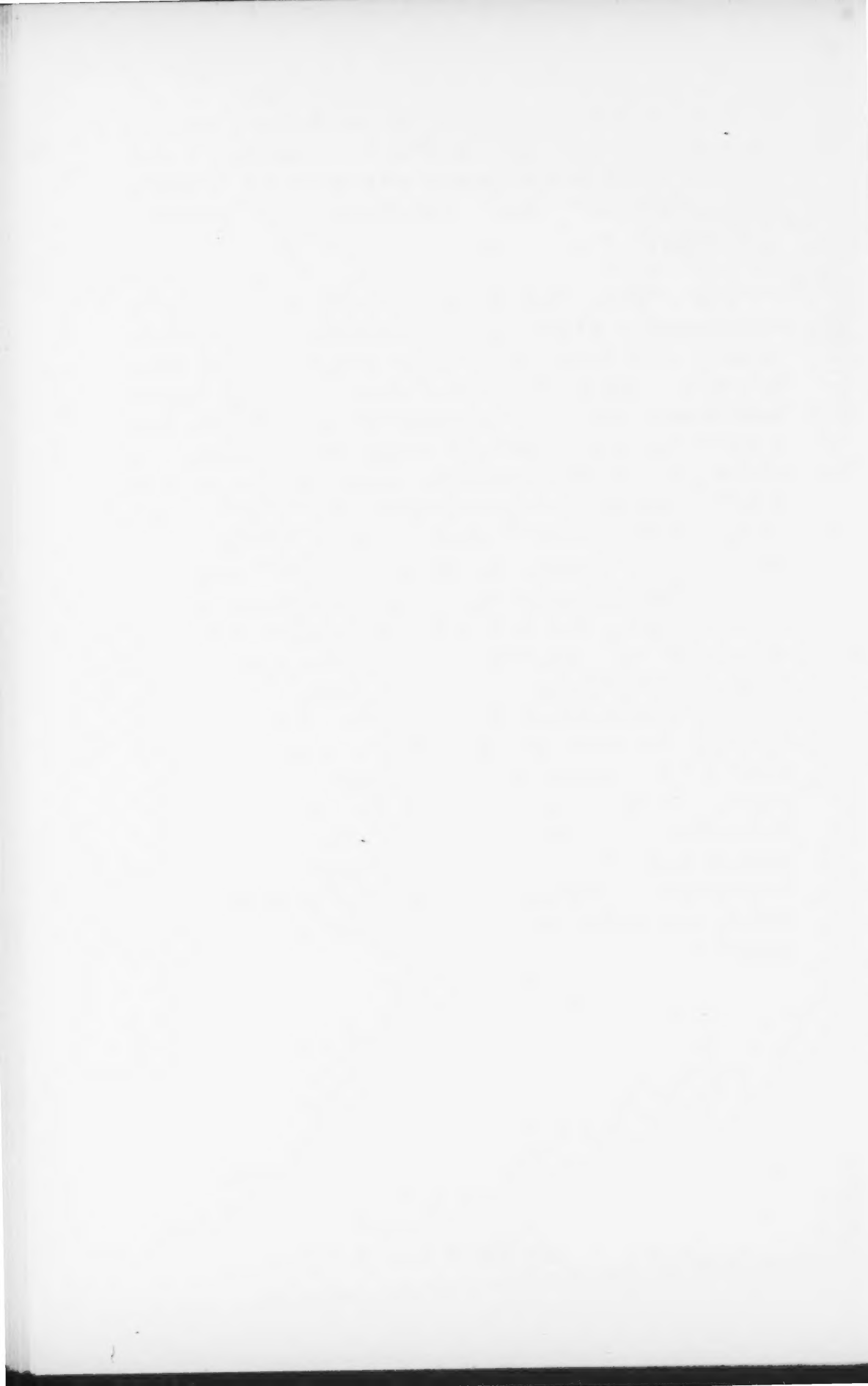
(2) "It is clearly impossible by the direct evidence alone for this defendant's separate, distinct and discontinuous trellis arbors that do not shut in the land to be considered a fence and this defendant's Constitutional rights under the 1st, 8th, and 14th amendments of the Constitution have been violated.

(3) "This defendant asks for continuance and review of my appeal by the Court of Appeals so that I may show how the lower courts errors of law have adversely affected not only this defendant's Constitutional rights, but significant public policy issues



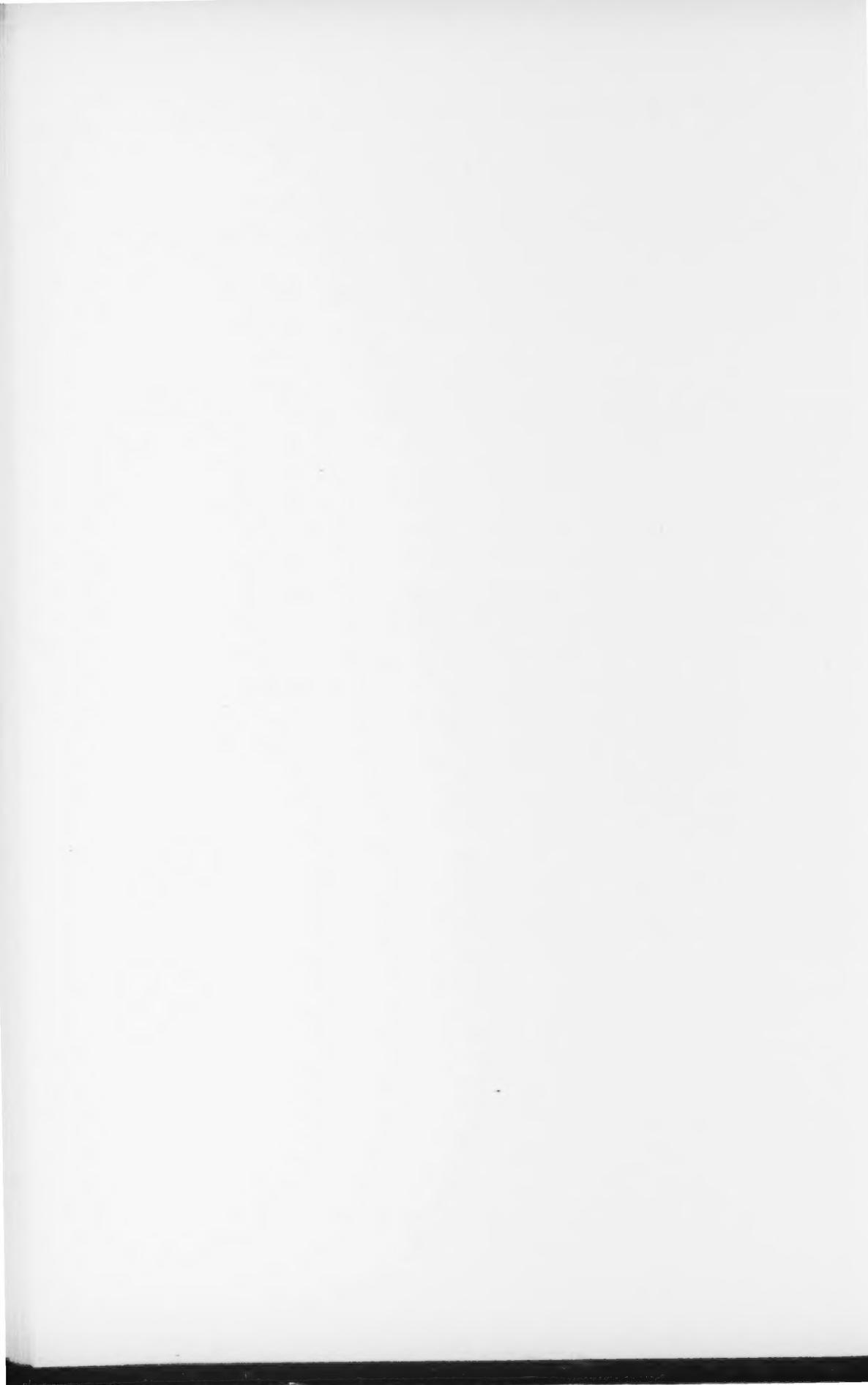
with regard to the safety and welfare of the general public, who's interests are protected by a fence and the public's rights as concerns the ownership of private property."

(4) "For the trial court to stifle an individual's right to incidental decorative design and creativity with respect to a man's private property violates the First Amendment of the Constitution. Fence law cannot be construed in such a way as to endanger Constitutional principles or the public safety or welfare. It must be remembered that with respect to real property, a fence, to be a fence ... must be a visible or tangible obstruction that shuts in the land, and any arbitrary use of the doctrine of equivalence, with respect to time delay relative to intrusion, is not a proper equivalence, because ... a fence with respect to real property must shut in the land with a visible or tangible obstruction, which time obviously is not. This defendant's trellis arbors are not equivalent to a fence, just like a basketball player, or a single tree, or a patio umbrella, etc., is not equivalent to a fence."



## RELEVANT PASSAGES FROM TRIAL TRANSCRIPT

Page (In Trial Transcript)	Page (In This Appendix)
7	K(1)
8	K(1)
15	K(2)
20	K(3)
28	K(3)
29	K(4)
30	K(5)
31	K(6-7)
42	K(7)
49	K(7)
50	K(8)
65	K(8)
66	K(9)
67	K(9)
Photo's	K(10-13)





RELEVANT PASSAGES FROM TRIAL TRANSCRIPT  
AND PHOTOGRAPHIC TRIAL EVIDENCE

TRIAL TRANSCRIPT - Page 7, lines 3-10.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "Does the defendant have a six-foot fence around his entire premises?"

A "Yes, he does."

Q "And did he get permission by virtue of a variance in order to put that fence there?"

A "Yes, he did."

Q "So that fence is legally there, six foot?"

A "Six-foot stockade fence is legally there."

TRIAL TRANSCRIPT - Page 8, lines 1-4.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "So he has a legal six-foot fence around his entire premises?"

A "Yes, he does."



TRIAL TRANSCRIPT - Page 15, lines 1-5.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "What else is between those two fences?" (the stockade fence and this Appellant's trellis arbors) "What's that, wire?"

A "Yes. That's commonly known as turkey wire."

TRIAL TRANSCRIPT - Page 15, lines 9-15.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "What is the purpose of that turkey wire, if you know?"

A "I can't venture a guess on that."

Q "It has no -- there's no reason that should be there with the fence?"

A "Probably didn't know what to do with it, so he put it in there."

TRIAL TRANSCRIPT - Page 15, lines 18-24.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "This is Plaintiff's 1C. I ask you what you observed in that photograph."



A "I observed the six-foot stockade fence as originally stated, some plastic pieces of fencing, corrugated green, corrugated plastic, plywood paneling, all vertically stacked."

Q "Is that secured to those fences, all that?"

A "That is just standing up and interwoven in and along, up against each other, secured to nothing."

TRIAL TRANSCRIPT - Page 20, lines 14-18.  
Direct Questioning of  
PLAINTIFF'S EYE WITNESS

Q "So the eastern end might be --"

A "Different. Just the whole thing is a little different concept there. Some paneling, but there's other trellises there and other kinds of fencing there, specifically along the rear yard lines."

TRIAL TRANSCRIPT - Page 28, lines 19-25.  
Cross-Examination of  
PLAINTIFF'S EYE WITNESS

Q "Didn't you file one (complaint) back in 1983, substantially the same, the same matter about a fence?"

A "Yes."



Q "And wasn't that dismissed by Judge Griffin?"

A "I can --"

Mr. Ehrlich (Town Attorney): "Your Honor --"

TRIAL TRANSCRIPT - Page 29, lines 1-25.  
Cross-Examination of  
PLAINTIFF'S EYE WITNESS

Mr. Anderson (Defendant's Attorney): "It's a matter of public record."

Mr. Ehrlick: "Your Honor, the People will stipulate that the counts against the Cafaro's based on the 1983 information were dismissed for lack of jurisdiction."

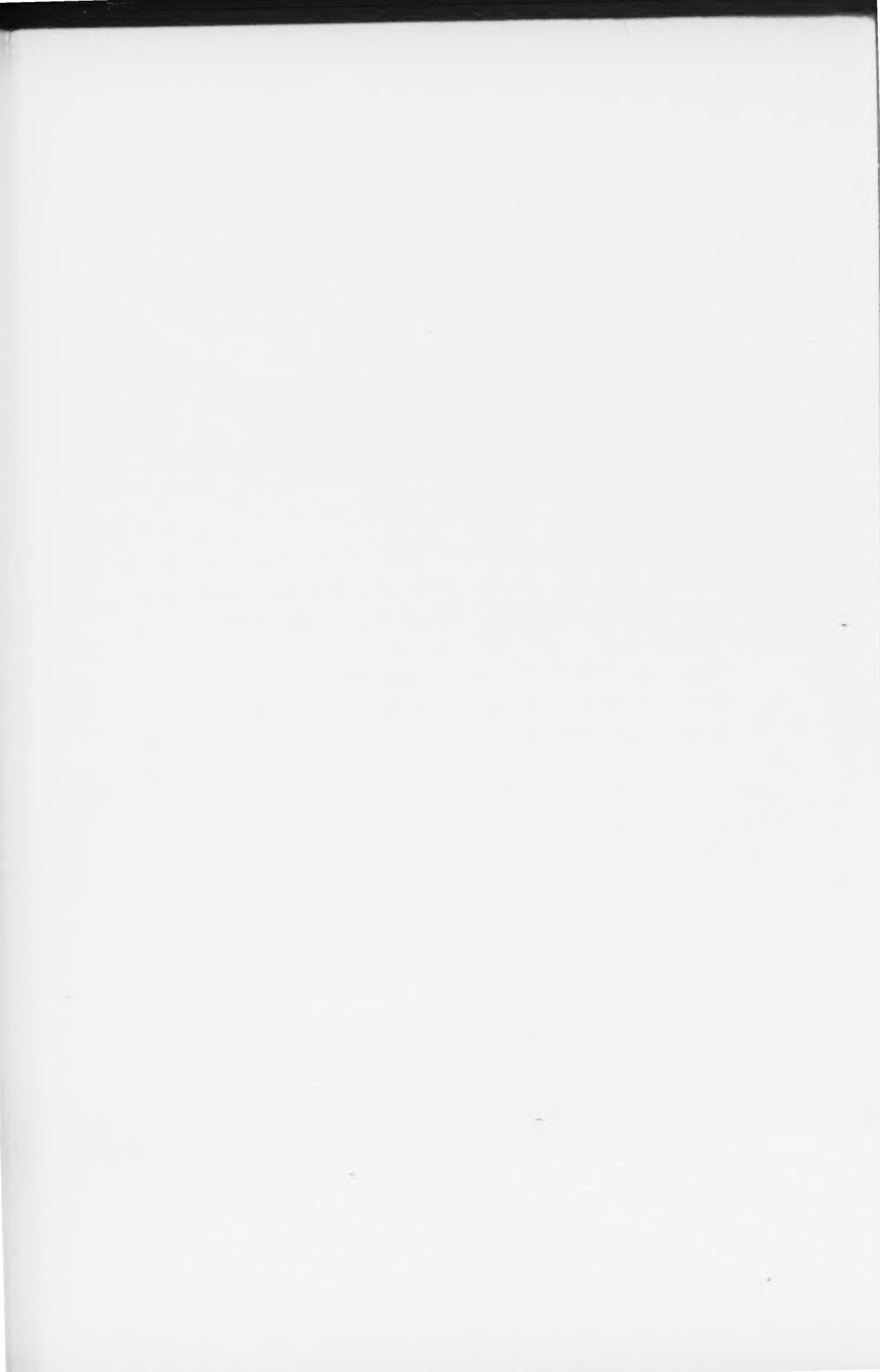
"Our inspectors were unable to penetrate the gates, the six-foot gates that go out to the front of the house, and couldn't even get to the door. And, therefore, having been unable to serve them at any point in time, People were forced to dismiss for lack of jurisdiction. They will stipulate to that."

Q "Have you, since those complaints have been filed, also filed other complaints against the Cafaros?"

A "Yes, I'm pretty sure I did."

Q "And they're returnable on a different date, yes?"

A "Yes."





Q "How do you define a fence?"

A "How do I define a fence?"

Q "Yes."

A "A combination of building materials to form a structure."

TRIAL TRANSCRIPT - Page 30, lines 1-25.  
Cross-Examination of  
PLAINTIFF'S EYE WITNESS

Q "And what does that structure do?"

A "Contains something that separates something."

Q "And how would you define a trellis?"

Mr. Ehrlich: "Objection. No relevance."

Mr. Anderson: "Yes, there is."

The Court: "I'll permit the question."

Cross-examination.

A "I would like to first know what the definition of the word trellis is."

Mr. Anderson: "That's what I'm asking you. How would you define it? And you ask how I would."



A "I would not define a trellis as a fence."

Q "And what would be the difference between a trellis and a fence, as far as you're concerned?"

A "To the best of my ability, conjecture is that trellis is something that you would like to, let's say, have a climbing vine type of plant growing somewhere in your yard, as a backdrop for perhaps some additional plantings placed indiscriminately in your yard, but certainly not acting as a fence."

"That's my definition of it, my outlook on it."

Q "In the Town of Oyster Bay Code, are there any restrictions as far as trellises are concerned?"

TRIAL TRANSCRIPT - Page 31, lines 1-7.  
Cross-Examination of  
PLAINTIFF'S EYE WITNESS

A "Not to my knowledge."

Mr. Ehrlich: "Objection, your Honor."  
"It's still not relevant."

The Court: "I'll permit the question."

Mr. Ehrlich: "Okay."



The Court: "Overruled."

TRIAL TRANSCRIPT - Page 31, lines 15-18.  
Cross-Examination of  
PLAINTIFF'S EYE WITNESS

Q "Were the panels removed?"

A "Panels were readjusted with a latticework nailed onto them, to create a, evidently nicer effect at the same height."

TRIAL TRANSCRIPT - Page 42, lines 6-10.  
Cross-Examination of  
DEFENDANT

Q "That's what your trellis looks like to the neighbors?"

A "Yes."

Q "How long along your property line, for lack of a better word, I'll call this a fence, does this fence run?"

TRIAL TRANSCRIPT - Page 49, lines 12-20.  
Cross-Examination of  
DEFENDANT

Q "What do this fiberglass and these turkey wires have to do with your trellis?"

A "Well, initially they were put up



as a trellis but they crumbled. I pulled them all out and we're using the wood latticework now."

Q "The parts where it's not two feet away, will you agree that you're in violation there?"

A "No, because there's no setback requirements on trellises."

TRIAL TRANSCRIPT - Page 50, lines 15-22.  
Cross-Examination of  
DEFENDANT

Q "What is the definition -- I'm going to reverse your attorney's question. What is the difference between a fence and a trellis?"

A "A fence is a continuous structure enclosing an area and bounding a property. And more or less, it's on the property boundary line. And a trellis is a separate, discontinuous structure which does not enclose an area."

TRIAL TRANSCRIPT - Page 65, lines 13-22.  
SENTENCING HEARING

The Court: "Mr. Cafaro, is there anything you'd like to state before I impose sentence?"





"What the People, or what the Town is recommending, if you do not conform to the regulations, is indeed harsh. A period of incarceration on a violation of a Town ordinance is a harsh sentence."

Mr. Cafaro: "It's obviously an injustice, your Honor. I'd like to appeal this to a higher Court."

TRIAL TRANSCRIPT - Page 66, lines 23-25.  
SENTENCING HEARING

Mr. Cafaro: "It's separate and distinct trellises, your Honor, and there are no ordinances."

TRIAL TRANSCRIPT - Page 67, lines 1-7.  
SENTENCING HEARING

The Court: "These were pieces of trellis work which were attached to and adhered to the fence which was surrounding your property, and that's what was found by the Court. We're not going to argue about that now. We're here for sentencing."

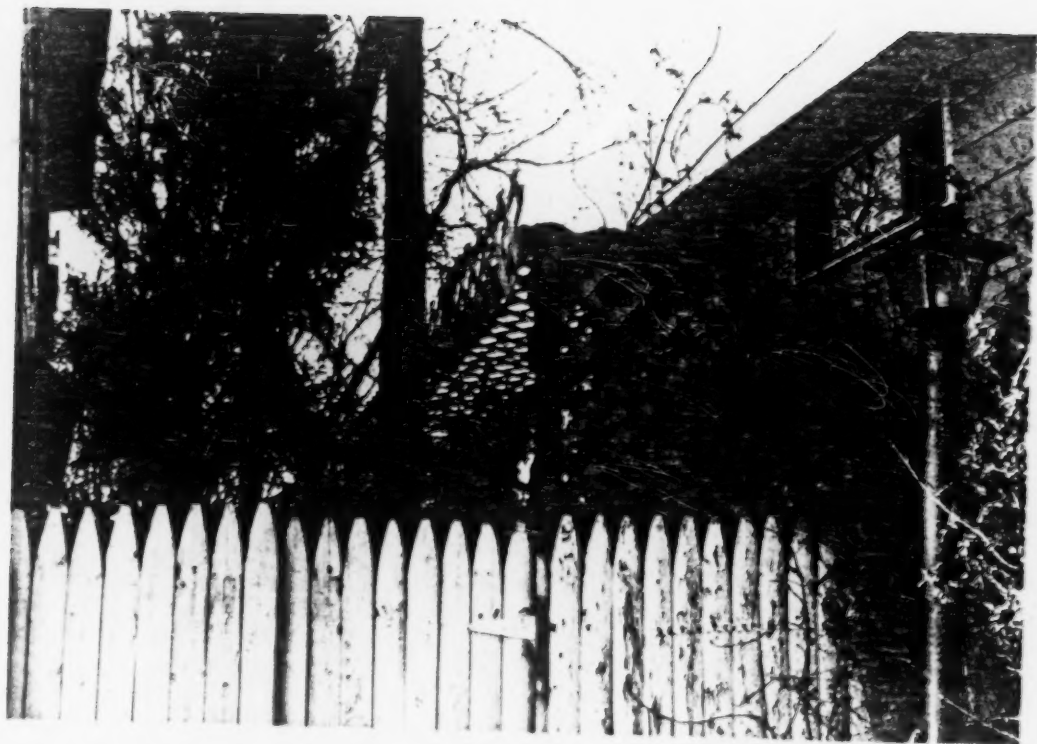




The purpose and function of this Appellant's trellis arbors is to support vines, and this is self-evident.

APPENDIX K(10)





Appellant's trellis-arbors are behind my six-foot stockade fence, and both self-evidently have different functions and purposes (if the stockade fence is removed the trellis-arbors do not shut in the land).

APPENDIX K(11)





Power lines, self-evidently, are never placed so close to the ground that they may touch this Appellant's trellis arbors that are 8 to 10 feet tall.

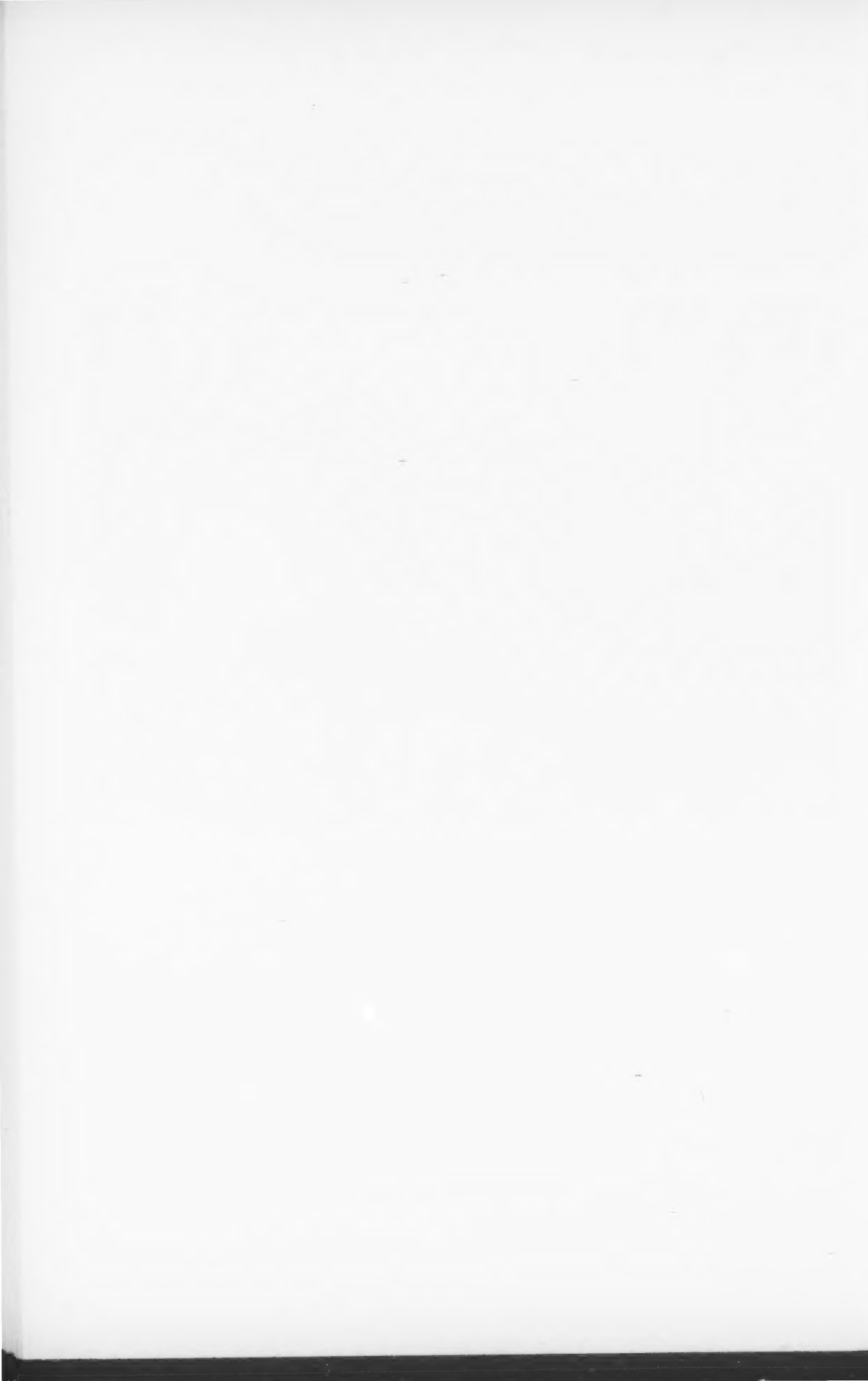
APPENDIX K(12)







The trellis-arbor, between our apple tree and cherry tree (near the raft), is not connected to the trellis-arbor on the northern side of our property (near the patio umbrellas), self-evidently discontinuous trellis-arbors, with many feet of open space between them, do not shut-in the land.



RELEVANT ARTICLES FROM THE UNITED NATIONS  
UNIVERSAL DECLARATION OF HUMAN RIGHTS

(Adopted by the United Nations  
General Assembly at its 183rd  
meeting, held in Paris on 10  
December 1948.)

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Futhermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.



Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17.(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to



change his religion or belief, and freedom, either **alone** or in community with others and in public or **private**, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.(2) No one may be compelled to belong to an association.

Article 27.(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.(3) The rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.





Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.